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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 69, No. 220
Tuesday, November 16, 2004

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–106–1]

Oriental Fruit Fly; Designation of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by quarantining a portion of Los Angeles County, CA, and restricting the interstate movement of regulated articles from that area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective November 9, 2004. We will consider all comments that we receive on or before January 18, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–106–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–106–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–106–1'' on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service reveal that a portion of Los Angeles County, CA, is infested with the Oriental fruit fly.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in Los Angeles County. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into noninfested areas of the United States, we are amending the regulations in § 301.93–3 by designating a portion of Los Angeles County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the rule portion of this document.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than

30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Oriental fruit fly regulations by adding a portion of Los Angeles County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

County records indicate there are approximately 23 nurseries, 27 farmers markets, 4 certified growers, 3 mobile vendors, and 152 fruit sellers within the quarantined area that may be affected by this rule.

We expect that any small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears to be minimal. The effect on any small entities that may move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.** The environmental assessment and finding of no significant impact may also be viewed on the Internet at *http://www.aphis.usda.gov/ppq/ep/ff/.*

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.93–3, paragraph (c) is amended by adding, in alphabetical order under the heading CALIFORNIA, an entry for Los Angeles County to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) * * *

CALIFORNIA

Los Angeles County. That portion of Los Angeles County in the Westchester area bounded by a line as follows: Beginning at the intersection of Culver Boulevard and South Sepulveda Boulevard; then southeast on South Sepulveda Boulevard to Jefferson Boulevard; then north, east, and north on Jefferson Boulevard to Rodeo Road; then east on Rodeo Road to West Martin Luther King Junior Boulevard; then southeast on West Martin Luther King Junior Boulevard to Crenshaw Boulevard; then south on Crenshaw Boulevard to West Slauson Avenue; then east on West Slauson Avenue to South Western Avenue; then south on South Western Avenue to West Florence Avenue; then east on West Florence Avenue to South Vermont Avenue; then south on South Vermont Avenue to West El Segundo Boulevard; then west on West El Segundo Boulevard to Western Avenue; then south on Western Avenue to Redondo Beach Boulevard; then southwest on Redondo Beach Boulevard to Artesia Boulevard; then west on Artesia Boulevard to Gould Avenue; then northwest and southwest on Gould Avenue to Manhattan Avenue; then northwest on Manhattan Avenue to Manhattan Beach Boulevard; then southwest on Manhattan Beach Boulevard to Manhattan Beach Pier; then southwest on Manhattan Beach Pier to the State of California coastline; then northwest along the State of California coastline to Ballona Creek; then northeast along Ballona Creek to Culver Boulevard; then northeast on Culver Boulevard to the point of beginning.

* * * * *

Done in Washington, DC, this 9th day of November 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–25390 Filed 11–15–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19569; Directorate Identifier 2004–NM–179–AD; Amendment 39–13869; AD 2004–23–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –300F series airplanes. This AD requires reworking the surface of the ground stud brackets of the transformer rectifier unit (TRU) and the airplane structure mounting surface, and measuring the resistance from the bracket to the structure and the ground lug to the bracket using a bonding meter. This AD is prompted by a report of loss of all direct current (DC) power generation during a flight, due to inadequate electrical ground path between the ground bracket of the TRU and the structure. We are issuing this AD to prevent depletion of the main battery and consequent loss of all DC power, which could cause the loss of flight critical systems.

DATES: Effective December 1, 2004.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of December 1, 2004.

We must receive comments on this AD by January 18, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Examining the Dockets

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Louis Natsiopoulous, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: We have received a report of loss of DC power generation on a Boeing Model 767 airplane during flight. Investigation by Boeing revealed that the operator had incorporated Boeing Service Bulletin 767–24–0119, dated May 14, 1998, and/or Revision 1, dated December 16, 1999, without proper preparation of the bonding surface of the ground bracket and the airplane structure. The inadequate preparation caused the loss of an adequate electrical ground path between the bracket and frame used for the transformer rectifier units (TRU) and the main battery charger, which caused the subsequent loss of all DC power generation. When the operator inspected the rest of its Model 767 fleet, it found a number of brackets that were not properly grounded. This condition, if not corrected, could result in depletion of the main battery and consequent loss of all DC power, which could cause the loss of flight critical systems.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004. The service bulletin describes procedures for reworking the bonding surfaces of the ground stud brackets of the TRU and airplane structure, and measuring the resistance from the bracket to the structure and from the ground lug to bracket using a bonding meter. The reworking includes:

- Removing the ground stud bracket of the TRU;
- Cleaning the bracket mounting surface and airplane structure surface for a faying surface bond;
- Installing the ground bracket assembly of the TRU to the surface using bolts;
- Applying fillet sealant to the bracket;
- Applying alodine to the prepared surfaces;
- And applying primer on bare metal surface.

We have also reviewed Boeing Information Notice 767–24A0119 IN 01, dated October 21, 2004. This information notice provides more detailed illustrations than those shown in Figure 1, Details A and B, of Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004. The information notice clarifies the Figure 1, Step 10, procedure of the Accomplishment Instructions in the service bulletin.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to prevent depletion of the main battery and consequent loss of all DC power, which could cause the loss of flight critical systems. This AD requires accomplishing the actions specified in

the service information described previously, except as discussed below in ''Clarification of Error in the Service Bulletin.''

Clarification of Error in the Service Bulletin

Boeing has informed us of an inadvertent error in the service bulletin. In Step 4, Sheet 3, of Figure 1 of the Accomplishment Instructions, the service bulletin only specifies to install a collar with part number (P/N) BACC30M6. However, a second collar with P/N BACC30BL6, which is listed in paragraph 2.C., ''Parts Necessary For Each Airplane,'' is also acceptable for installation. We have included paragraph (g) in this AD to allow the installation of P/N BACC30BL6 as an alternative method of compliance to the corresponding requirement of paragraph (f) of this AD (which references the service bulletin as the appropriate source of service information for accomplishing the required actions).

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification (to add a redundant TRU grounding bracket on all 767 airplanes) that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19569; Directorate Identifier 2004–NM–179–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www/faa.gov/language* and *http://www.plainlanguage.gov.*

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2004–23–14 Boeing: Amendment 39–13869. Docket No. FAA–2004–19569; Directorate Identifier 2004–NM–179–AD.

Effective Date

(a) This AD becomes effective December 1, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, as listed in Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004, certificated in any category; on which the actions of Boeing Service Bulletin 767–24–0119, dated May 14, 1998, and/or Revision 1, dated December 16, 1999, have been done.

Unsafe Condition

(d) This AD was prompted by a report of loss of all direct current (DC) power generation during a flight. The FAA is issuing this AD to prevent depletion of the main battery and consequent loss of all DC power, which could cause the loss of flight critical systems.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Rework and Measure Resistance

(f) Within 45 days after the effective date of this AD, rework the ground stud bracket of the transformer rectifier unit (TRU) and structure mounting surface, and measure the resistance from the bracket to the structure and the grounding lug to the bracket using a bonding meter, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004, as revised by Boeing Information Notice 767–24A0119 IN 01, dated October 21, 2004, except as provided by paragraph (g) of this AD.

(g) Step 4, Sheet 3 of Figure 1 in the Accomplishment Instructions of the service bulletin only specifies to install one collar with part number (P/N) BACC30M6. However, a collar with P/N BACC30BL6 (as listed in paragraph 2.C., ''Parts Necessary For Each Airplane'' of the service bulletin) may be used as an alternative method of compliance (AMOC).

AMOCs

(h) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if

requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 767–24A0119, Revision 2, dated August 19, 2004, as revised by Boeing Information Notice 767–24A0119 IN 01, dated October 21, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 3, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25191 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–182–AD; Amendment 39–13867; AD 2004–23–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 and –300 series airplanes. This AD requires inspection of the guide arm assembly on passenger door number 1 left for a part mark to determine whether the guide arm assembly contains an adjuster rod, which was incorrectly manufactured, and replacement of any such adjuster rod. This action is necessary to prevent failure of the adjuster rod in the passenger door guide arm assembly, which could prevent the door from opening or closing during normal or emergency operations, resulting in the inability to evacuate the crew and passengers in an emergency. This action is intended to address the identified unsafe condition.

DATES: Effective December 21, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: David Crotty, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6422; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 and –300 series airplanes was published in the **Federal Register** on February 9, 2004 (69 FR 5939). That action proposed to require inspection of the guide arm assembly on passenger door number 1 left for a part mark to determine whether the guide arm assembly contains an adjuster rod, which was incorrectly manufactured, and replacement of any such adjuster rod.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Compliance Time

One commenter requests that the compliance time specified in paragraph (b) of the proposed AD be changed from ''Within 18 months of the effective date of this AD'' to ''Within 18 months of the effective date of this AD or prior to 6,666 total aircraft cycles, whichever occurs later.'' The commenter notes that Boeing Special Attention Service Bulletin 757–52–0077, dated February 15, 2001; and Boeing Special Attention Service Bulletin 757–52–0078, dated February 15, 2001 (both service bulletins were referenced as the appropriate sources of service information for accomplishing the proposed AD); suggest replacing any applicable adjuster rod before the aircraft reaches 6,666 flight cycles. The commenter states that Boeing and the hardware manufacturer base the cycle limits on fatigue analysis.

We partially agree. We do not agree that the compliance time specified in paragraph (b) of the final rule should be revised. The referenced service bulletins specify that the initial inspection should be done at the next maintenance time. The compliance time of ''within 18 months of the effective date of this AD'' allows most operators to inspect during scheduled maintenance and is an appropriate interval for affected airplanes to continue to operate without compromising safety.

However, we have revised the compliance times specified in paragraphs (c) and (d) of the final rule from ''before further flight'' to ''prior to the accumulation of 6,666 total flight cycles'' for the replacement and test of the adjuster rod of the guide arm assembly in order to align with the flight cycle compliance time recommended in the referenced service bulletins.

Request To Remove ''Parts Installation'' Paragraph

Two commenters request that ''Parts Installation'' paragraph (e) of the proposed AD be removed. One commenter states that only the adjuster rods of the guide arm assemblies on passenger door number 1 left are defective for airplanes specified in the referenced service bulletins. The commenter notes that all other adjuster rods are not affected. The other commenter points out that the referenced service bulletins do not indicate any spares or existing parts accountability concerns.

We agree with the commenters' request. Boeing and the part manufacturer have accounted for all affected parts and, therefore, replacement adjuster rods are not affected. We have removed paragraph (e) from the final rule and reidentified the paragraphs that follow.

Request To Revise Wording

One commenter requests that the wording in the ''Summary'' paragraph of the proposed AD be changed from

''* * * door number 1 * * *'' to ''* * * door number 1 left * * *''

We agree to revise the ''Summary'' paragraph of the final rule in accordance with the commenter's request. The word ''left'' was inadvertently omitted from the ''Summary'' paragraph. The adjuster rods affected by the final rule are installed only on door number 1 left.

Request To Revise ''Cost Impact'' Paragraph

One commenter requests that the ''Cost Impact'' paragraph be revised. The commenter states that the affected number of airplanes should be revised from 9 to 35. The commenter notes that the cost impact amount would also need to be changed.

We agree to revise the ''Cost Impact'' paragraph. The number of affected airplanes of U.S. registry is 35, and the number of affected worldwide airplanes is 63. We have revised the ''Cost Impact'' paragraph of the final rule accordingly.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 63 airplanes of the affected design in the worldwide fleet. We estimate that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,275, or $65 per airplane.

We estimate that it will take approximately 2 work hours per airplane to accomplish the required replacement. Required parts would cost approximately $478 per airplane. Based on that figure, the cost impact of the required replacement on U.S. operators is estimated to be a maximum of $21,280, or $608 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts and of labor associated with this AD, subject to warranty conditions. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–23–12 Boeing: Amendment 39–13867. Docket 2001–NM–182–AD.

Applicability: Model 757–200 series airplanes, as listed in Boeing Special Attention Service Bulletin 757–52–0077, dated February 15, 2001; and Model 757–300 series airplanes, as listed in Boeing Special Attention Service Bulletin 757–52–0078, dated February 15, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the adjuster rod in the passenger door guide arm assembly, which could prevent the door from opening or closing during normal or emergency operations, resulting in the inability to evacuate the crew and passengers in an emergency, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 757–200 series airplanes: Boeing Special Attention Service Bulletin 757–52–0077, dated February 15, 2001; and

(2) For Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–52–0078, dated February 15, 2001.

Inspection of Part Mark

(b) Within 18 months of the effective date of this AD: Inspect the part mark on the guide arm assembly of the number 1 left passenger door, in accordance with the applicable service bulletin.

Follow-on Actions

(c) If the inspection of the part mark required by paragraph (b) of this AD reveals the name of a supplier, accomplish the action specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If the part mark of supplier CDSL is found on the guide arm assembly, prior to the accumulation of 6,666 total flight cycles, replace the adjuster rod of the guide arm assembly per Figure 2 of the applicable service bulletin.

(2) If the part mark of a supplier other than CDSL is found on the guide arm assembly, then the adjuster rod is satisfactory, and no further action is required by this paragraph.

(d) If no part mark is found during the inspection required by paragraph (b) of this AD, prior to the accumulation of 6,666 total flight cycles, accomplish the action specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) Replace the adjuster rod of the guide arm assembly per Figure 2 of the applicable service bulletin.

(2) Test the hardness of the adjuster rod of the guide arm assembly per Figure 3 of the applicable service bulletin; and do the action specified in paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable.

(i) If the hardness of the adjuster rod is less than 44 HRC (Rockwell C Hardness scale), prior to the accumulation of 6,666 total flight cycles, replace the adjuster rod of the guide arm assembly per Figure 2 of the applicable service bulletin.

(ii) If the hardness of the adjuster rod is greater than 44 HRC, then the adjuster rod is satisfactory, and no further action is required by this paragraph.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 757–52–0077, dated February 15, 2001; and Boeing Special Attention Service Bulletin 757–52–0078, dated February 15, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(g) This amendment becomes effective on December 21, 2004.

Issued in Renton, Washington, on November 3, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25190 Filed 11–15–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–74–AD; Amendment 39–13861; AD 2004–23–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, –200CB, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, that requires inspection for damage of the W2800 wire bundle insulation, wire conductor, the wire bundle clamp bracket, and the BACC10GU( ) clamp, and repair or replacement with new or serviceable parts, if necessary. This amendment also requires installation of spacers between the clamp and the bracket. This action is necessary to prevent contact between the power feeder wires of the auxiliary power unit (APU) and the clamp bracket aft of the STA 1720 bulkhead due to chafing damage of the Adel clamp and ''L'' shaped bracket, which could result in electrical arcing and fire, or loss of APU electrical power in the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 21, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Elias Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes was published in the **Federal Register** on June 14, 2002 (67 FR 40894). That action proposed to require inspection for damage of the W2800 wire bundle insulation, wire conductor, the wire bundle clamp bracket, and the BACC10GU( ) clamp, and repair or replacement with new or serviceable parts, if necessary. That action also proposed to require installation of spacers between the clamp and the bracket.

Since the Issuance of the Proposed AD

Since the issuance of the proposed AD, Boeing has issued Special Attention Service Bulletins 757–24–0089, Revision 1, and 757–24–0090, Revision 1, both dated February 27, 2003. Except for the addition of an auxiliary power unit (APU) generator system test to be accomplished if damage is found on the W2800 wire bundle, the service bulletins are essentially identical to the original service bulletins, both dated March 15, 2001. The original issue service bulletins were referenced in the proposed AD as the appropriate sources of service information for the required actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter has no objection to the proposed AD.

Request To Extend the Compliance Time

One commenter requests that the compliance time for the general visual inspections be extended from 15 months to 24 months. The commenter states that it has found no chafing damage to the wire bundle on its airplanes. Therefore, the commenter states the extension of compliance time will allow the inspections to be performed during scheduled heavy maintenance checks, which are scheduled every 24 months.

The FAA agrees that the compliance time for the accomplishment of the general visual inspections may be extended somewhat. We have reassessed the compliance time and considered the manufacturer's recommendation of a compliance time of 18 months for the general visual inspection. In addition, we have determined that, for airplanes on which no damage is found and there is a 0.25-inch minimum clearance between the wire bundles and aft edge of the bracket, the compliance time for accomplishing the follow-on actions (installing the spacers and ensuring the minimum clearance) may be extended from ''before further flight'' to ''24 months after the effective date of this AD'' for those follow-on actions. We consider that such an extension of the compliance time for the follow-on actions will not adversely affect the adequate safety of flight of the airplane. The requirements of paragraph (a) of the AD have been revised accordingly.

Request To Remove the Requirement To Install Spacers

One commenter requests that the requirement to install spacers be removed from the proposed AD. The commenter states that it inspected wire bundle W2800 on an airplane in its fleet that did not have spacers, and the

inspection revealed that there was at least ¼-inch clearance between the bracket and wire bundle. The commenter asserts that correct positioning of the wire bundle, without the installation of spacers, will prevent interference between the bundle and bracket.

The FAA does not agree to remove the requirement to install spacers. Installing spacers will ensure that appropriate clearance is maintained between the bracket and wire bundle. However, as discussed in our response above, we have revised paragraph (a) of this AD to extend the compliance time to 24 months for installation of the spacers for certain airplanes.

Request To Allow Damage Where Certain Tolerances Are Not Exceeded

One commenter requests that the proposed AD allow certain damage to exist where certain damage tolerance limits are not exceeded. The commenter states that there should be no requirement to repair or replace a wire bundle or its attaching hardware when it meets acceptable damage tolerances. The commenter points out that, in those cases, only repositioning is necessary, rather than repair or replacement, to prevent further damage.

The FAA partially agrees with the commenter. We have determined that it is unnecessary to ''repair or replace'' for those cases where damage to the wire bundle is within certain limits. However, there are no acceptable damage limits for the clamp bracket or the BACC10GU() clamp. Therefore, the final rule specifies that any damage to the clamp bracket or the BACC10GU() clamp requires replacement of the applicable part. We have revised the final rule to specify that the damage tolerance limits for the wire bundle must be approved by the Seattle Aircraft Certification Office (ACO), FAA. Damage limits specified in Chapter 20–10–13 the Boeing Standard Wiring Practices Manual (BSWPM) are also approved as a source to identify specific damage limits.

Request To Permit Interim Repair

One commenter states that the repair for damaged wires as specified in the BSWPM, referenced in the applicable service bulletin, requires replacement or repair by splicing any wire when damage extends to the conductor. The commenter notes that, in this case, the affected area does not allow sufficient distance to install a repair splice. The commenter advises that the only way to repair such a damaged conductor is to install a repair splice inside of the pressurized area and run the other end to the production ALCU splice at B STA 1862. The commenter further states that this procedure will require the removal of a galley and certain cabin panels, which will increase the length of time needed to accomplish the corrective action. Additionally, the commenter recommends the following actions instead of wire replacement with the following limitations:

- In the case of a single damaged conductor (one nicked strand, no broken strands), perform an interim insulation repair per BSWPM Chapter 20–10–13 and repair the clamp per the service bulletin.
- Replace the interim wire repair at the next C check, with a permanent wire splice per BSWPS Chapters 20–10–13 and 20–30–13 at B STA 1640.

The commenter asserts that those actions would provide an equivalent level of safety and allow minimal interruption of service.

We agree that, in the case of a single damaged conductor (one nicked strand, no broken strands), an interim insulation repair may be performed per the BSWPM under the following condition: The interim wire repair is replaced per the BSWPM within 6,000 flight hours from the accomplishment date of the interim repair. We have added new paragraph (c) of the AD to address accomplishment of the interim repair.

Request To Clarify Cost Information

This same commenter notes that the cost impact for accomplishing the repair of a damaged wire by splicing may significantly increase the cost of this AD. The commenter states that it would take approximately 65 work hours per airplane to perform that type of repair.

We acknowledge that if an operator is required to perform an ''on-condition'' repair, the costs of accomplishing the AD may increase. However, the economic analysis of an AD is limited to the cost of actions that are actually required. The economic analysis does not consider the costs of conditional actions, such as repairing damage detected during a required inspection (''repair, if necessary''), or as in this case, an alternative interim repair. Conditional costs would be required, regardless of AD direction, to correct an unsafe condition identified in an airplane and to ensure that the airplane is operated in an airworthy condition is required by the Federal Aviation Regulations. Therefore, no change to the ''Cost Impact'' section is required to this AD in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 934 Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 595 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $38,675, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–23–06 Boeing: Amendment 39–2004–23–06. Docket 2001–NM–74–AD.

Applicability: Model 757–200, –200PF, –200CB, as listed in Boeing Special Attention Service Bulletin 757–27–0089, Revision 1; and Model 757–300 series airplanes, as listed in Boeing Special Attention Service Bulletin 757–24–0090, Revision 1; both service bulletin revisions dated February 27, 2003; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical contact between the power feeder wires of the auxiliary power unit (APU) and the clamp bracket aft of STA 1720 bulkhead due to chafing damage of the Adel clamp and ''L'' shaped bracket, which could result in electrical arcing and fire or loss of electrical power in the airplane; accomplish the following:

Inspection and Repair

(a) Within 18 months after the effective date of this AD, perform a general visual inspection for damage of the W2800 wire bundle insulation, wire conductor, wire bundle clamp bracket, and the BACC10GU( ) clamp; per Boeing Special Attention Service Bulletin 757–24–0089, Revision 1, dated February 27, 2003 (for Boeing Model 757–200 series airplanes); or Boeing Special Attention Service Bulletin 757–24–0090, Revision 1, dated February 27, 2003 (for Boeing Model 757–300 series airplanes); as applicable.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) With the exception of the actions specified in paragraph (c) of this AD: For the conditions specified in paragraph (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this AD, and in paragraph (a)(1)(iv) of this AD, within 24 months after the effective date of this AD, install spacers and ensure that there is the minimum clearance between the wire bundle and aft edge of the bracket, per the applicable service bulletin.

(i) No damage is detected to the wire bundle insulation or the wire conductor,

(ii) Damage is detected to the wire bundle insulation or the wire conductor that is within certain limits approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or

(iii) Damage is detected to the wire bundle insulation or the wire conductor that is within certain limits specified in Chapter 20–10–13 of the BSWPM; and

(iv) There is a 0.25-inch minimum clearance between the wire bundle and aft edge of the bracket.

(2) With the exception of the actions specified in paragraph (c) of this AD: For the conditions specified in paragraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, and in paragraph (a)(2)(iv) of this AD, before further flight, install spacers and ensure the minimum clearance between the wire bundle and aft edge of the bracket, per the applicable service bulletin.

(i) No damage is detected to the wire bundle insulation or the wire conductor,

(ii) Damage is detected to the wire bundle insulation or the wire conductor that is within certain limits approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or

(iii) Damage is detected to the wire bundle insulation or the wire conductor that is within certain limits specified in Chapter 20–10–13 of the BSWPM; and

(iv) There is less than 0.25-inch minimum clearance between the wire bundle and aft edge of the bracket.

(3) If any damage is detected to the wire insulation or wire conductor and the damage is outside the damage limits approved by the Manager, Seattle ACO, or specified in Chapter 20–10–13 of the BSWPM: Before further flight, repair the damage per the applicable service bulletin.

(4) If no damage is detected to the wire bundle clamp bracket or the BACC10GU( ) clamp: Within 24 months after the effective date of this AD, install spacers and ensure that there is 0.25-inch minimum clearance between the wire bundle and aft edge of the bracket; per the applicable service bulletin.

(5) If any damage is detected to the wire bundle clamp bracket or the BACC10GU( ) clamp: Before further flight, replace the clamp bracket and the clamp with new or serviceable parts, install spacers, and ensure that there is 0.25-inch minimum clearance between the wire bundle and aft edge of the bracket; per the applicable service bulletin.

Acceptable Method of Compliance

(b) Accomplishment of the actions specified in Boeing Service Bulletin 757–24–0089, dated March 15, 2001; or Boeing Service Bulletin 757–24–0090, dated March 15, 2001; as applicable, is considered acceptable for compliance with the requirements specified in paragraph (a) of this AD.

Interim Repair

(c) If damage to a wire conductor is detected during any inspection required by paragraph (a) of this AD that only consists of one strand being nicked and no broken strands: Accomplish the actions specified in paragraph (c)(1), (c)(2), and (c)(3) of this AD at the time specified.

(1) Prior to further flight, accomplish an interim repair of the insulation per a method approved by the Manager, Seattle ACO. For an interim repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD. Chapter 20–10–13 of the BSWPM is one approved method for accomplishing an interim repair.

(2) Accomplish the actions at the time specified in either paragraph (a)(4) or (a)(5) of this AD, as applicable.

(3) Within 6,000 flight hours after accomplishing the interim repair of the insulation specified in paragraph (c)(1) of this AD, replace the interim repair with a permanent repair, per a method approved by the Manager, Seattle ACO. For a permanent method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD. Accomplishing Chapters 20–10–13 and 20–30–13 of the BSWPM is one approved method for replacement of the interim repair with a permanent repair.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 757–24–0089, Revision 1, dated February 27, 2003; or Boeing Special Attention Service Bulletin 757–24–0090, Revision 1, dated February 27, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(g) This amendment becomes effective on December 21, 2004.

Issued in Renton, Washington, on November 3, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25189 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–277–AD; Amendment 39–13868; AD 2004–23–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD); applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes; that requires inspecting the ram air turbine (RAT) actuator to determine its serial number; and re-identifying the RAT actuator, inspecting the RAT actuator to determine whether the rotary solenoids are in the correct position, and replacing the RAT actuator, as applicable. This action is necessary to prevent failure of the RAT actuator to deploy when necessary during flight, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective December 21, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes was published in the **Federal Register** on April 1, 2004 (69 FR 17109). That action proposed to require inspecting the ram air turbine actuator (RAT) to determine its serial number; and re-identifying the RAT actuator, inspecting the RAT actuator to determine whether the rotary solenoids are in the correct position, and replacing the RAT actuator, as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from a single commenter.

Request To Expand Applicability To Include Additional Models

The commenter, the airplane manufacturer, notes that French airworthiness directive 2002–422(B) R1, dated January 22, 2003, applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes, equipped with certain RAT modules. The commenter notes that the French airworthiness directive will have to be revised to apply to Airbus Model A330–302 and –303 airplanes when those airplanes are certificated.

We infer that the commenter is requesting that we revise the proposed AD to include the additional models. We do not concur. Airbus Model A330–302 and –303 airplanes are not certificated in the United States as of the preparation of this final rule. If these models are certificated in the United States in the future, we may consider rulemaking to require actions similar to those required by this AD on those airplanes, if necessary. We have made no change to this AD.

Request To Revise Compliance Time

The commenter notes that the proposed AD differs from French airworthiness directives 2002–422(B) R1 and 2002–423(B) R1, both dated January 22, 2003, in the compliance time for the one-time inspection to determine if the rotary solenoids are in the correct position. We infer that the commenter is referring to the fact that French airworthiness directives 2002–422(B) R1 and 2002–423(B) R1 require that this inspection be done ''not later than August 31, 2004,'' while the proposed AD specifies a compliance of 24 months after the effective date of the AD for the same action.

We infer that the commenter is requesting that we revise the

compliance time to correspond to the compliance time in the French airworthiness directives for the inspection to determine if the rotary solenoids are in the correct position. We do not concur that a change is necessary. We express compliance times based on calendar dates (*e.g.*, ''before January 1, 1993'') only when engineering analysis establishes a direct relationship between the date and the compliance time. In this case, no direct relationship exists. We note that paragraph 3., ''Compliance'' of the French airworthiness directives states that ''the following measures are rendered mandatory from the effective date of this AD at original issue.'' The compliance time for the subject inspection in the French airworthiness directives, August 31, 2004, corresponds to 24 months after the effective date of the original issue of the French airworthiness directives (August 31, 2002). Thus, the compliance time of 24 months after the effective date of this AD for the inspection to determine whether the rotary solenoids are in the correct position, as stated in paragraph (c) of this AD, is consistent with the compliance time specified in the French airworthiness directives. We have made no change to this AD.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

We estimate that 9 Model A330 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,340, or $260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no affected Model A340–200 or –300 airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, it will be subject to the same costs stated above for the Model A330 series airplanes.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–23–13 Airbus: Amendment 39–13868. Docket 2003–NM–277–AD.

Applicability: Model A330, A340–200, and 340–300 series airplanes; certificated in any category; equipped with a ram air turbine (RAT) module, Model ERPS06M, having part number (P/N) 766351, 768084, 770379, 770952, or 770952A; and containing RAT actuator P/N 5911905, 5911326, or 5913234.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the RAT actuator to deploy when necessary during flight, which could result in reduced controllability of the airplane, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins listed in paragraphs (a)(1) and (a)(2) of this AD. Although these service bulletins specify returning removed actuators to Liebherr-Aerospace for inspection, this AD does not require this action.

(1) For Model A330 series airplanes: Airbus Service Bulletin A330–29–3083, dated August 6, 2002.

(2) For Model A340–200 and –300 series airplanes: Airbus Service Bulletin A340–29–4064, Revision 01, dated August 8, 2002.

Note 1: The service bulletins refer to Hamilton Sundstrand Service Bulletin ERPS06M–29–16, dated July 18, 2002; and Liebherr-Aerospace Service Bulletin 1560A–29–03, dated July 8, 2002; as additional sources of service information for identifying and inspecting subject RAT actuators, determining whether inspection findings are within acceptable limits, and re-identifying actuators if necessary. Although the Liebherr-Aerospace service bulletin specifies completing and returning a sheet recording compliance with that service bulletin and returning removed actuators for inspection, this AD does not require these actions.

Serial Number Inspection

(b) Within 24 months after the effective date of this AD, inspect the RAT actuator to determine its serial number (S/N), per the applicable service bulletin. If the RAT actuator has a S/N greater than 1286, re-identify the RAT actuator, per the applicable service bulletin.

Inspection To Determine Position of Rotary Solenoids

(c) If the RAT actuator has a S/N less than or equal to 1286: Within 24 months after the effective date of this AD, perform a one-time detailed inspection of the RAT actuator to determine whether the rotary solenoids are in the correct position, per the applicable service bulletin.

(1) If the position of the rotary solenoids is within the limits specified in the applicable service bulletin: Before further flight, re-identify the RAT actuator, per the applicable service bulletin.

(2) If the position of the rotary solenoids is outside the limits specified in the applicable service bulletin: Before further flight, replace the RAT actuator with a new or serviceable actuator, per the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror,

magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Parts Installation

(d) As of the effective date of this AD, no person may install, on any airplane, a RAT actuator having P/N 5911905, 5911326, or 5913234, unless the actions required by this AD are accomplished.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A330–29–3083, dated August 6, 2002; or Airbus Service Bulletin A340–29–4064, Revision 01, dated August 8, 2002, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 3: The subject of this AD is addressed in French airworthiness directives 2002–422(B) R1 and 2002–423(B) R1, both dated January 22, 2003.

Effective Date

(g) This amendment becomes effective on December 21, 2004.

Issued in Renton, Washington, on November 1, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–25035 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19333; Airspace Docket No. 04–ACE–62]

Modification of Class E Airspace; Warrensburg, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, October 29, 2004, (69 FR 63063) (FR Doc. 04–24260). It corrects an error in the legal description of the Class E airspace area extending upward from 700 feet above the surface at Warrensburg, MO.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 04–24260, published on Friday, October 29, 2004, (69 FR 63063) modified the Class E airspace area extending upward from 700 feet above the surface at Warrensburg, MO. The modification corrected a discrepancy in the Skyhaven Airport airport reference point used in the legal description, enlarged the airspace dimensions to protect for diverse departures, deleted an extension to the airspace area and brought the legal description of the Warrensburg, MO Class E airspace area into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. However, expansion of the Warrensburg, MO Class E airspace area created an overlapping of the Knob Noster, MO Class D airspace area. No provision was made in the Warrensburg, MO Class E airspace area legal description for this situation.

Accordingly, pursuant to the authority delegated to me, the legal description of the Class E airspace area extending upward from 700 feet above the surface at Warrensburg, MO, as published in the **Federal Register** on Friday, October 29, 2004, (69 FR 63063) (FR Doc. 04–24260) is corrected as follows:

§ 71.1 [Corrected]

■ On page 63064, Column 1, under the heading ''ACE MO E5 Warrensburg, MO'', correct the last line to read ''of Skyhaven Airport; excluding that airspace within the Knob Noster, MO Class D airspace area.''

Issued in Kansas City, MO, on November 3, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–25417 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19575; Airspace Docket No. 04–ACE–65]

Modification of Class E Airspace; Lexington, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Lexington, MO. A review of controlled airspace for Lexington Municipal Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, March 17, 2005. Comments for inclusion in the Rules Docket must be received on or before December 27, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19575/ Airspace Docket No. 04–ACE–65, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Lexington, MO. An examination of controlled airspace for Lexington Municipal Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures

as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment expands the airspace area from a 6-mile radius to a 7.8-mile radius of Lexington Municipal Airport and brings the legal description of the Lexington, MO Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in the rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of the comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19575/Airspace Docket No. 04–ACE–65.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Lexington, MO

Lexington Municipal Airport, MO
(Lat. 39°12′35″ N., long. 93°55′41″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Lexington Municipal Airport.

* * * * *

Issued in Kansas City, MO, on November 3, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–25416 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

Forms, Securities Exchange Act of 1934

CFR Correction

■ In Title 17 of the Code of Federal Regulations, Part 240 to End, revised as of April 1, 2004, on page 589, remove and reserve § 249.636.

[FR Doc. 04–55519 Filed 11–15–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

Passports

CFR Correction

■ In Title 22 of the Code of Federal Regulations, Parts 1 to 299, revised as of April 1, 2004, on page 259, § 51.27 is corrected by adding paragraphs (d)(1)(i)(A) through (D) and (d)(1)(ii) to read as follows:

§ 51.27 Minors.

* * * * *

(d) * * *

(1)(i) * * *

(A) Grants sole custody to the objecting parent; or,

(B) Establishes joint legal cutody; or,

(C) Prohibits the child's travel without the permission of both parents or the court; or,

(D) Requires the permission of both parents or the court for important decisions, unless permission is granted in writing as provided therein.

(ii) For passport issuance purposes, a court order providing for joint legal custody will be interpreted as requiring the permission of both parents. The Department will consider a court of competent jurisdiction to be a U.S. state court or a foreign court located in the child's home state or place of habitual residence. Notwithstanding the existence of any such court order, a passport may be issued when compelling humanitarian or emergency reasons relating to the welfare of the child exist.

* * * * *

[FR Doc. 04–55520 Filed 11–15–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9159]

RIN 1545–BD50

Payments Made by Reason of a Salary Reduction Agreement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document contains a temporary regulation that defines the term ''salary reduction agreement'' for purposes of section 3121(a)(5)(D) of the Internal Revenue Code (Code). The temporary regulation provides guidance to employers (public educational institutions and section 501(c)(3) organizations) purchasing annuity contracts described in section 403(b) on behalf of their employees. The text of the temporary regulation also serves as the text of the proposed regulation set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* This regulation is effective on November 16, 2004.

Applicability Date: For dates of applicability, *see* § 31.3121(a)(5)–2T(b).

FOR FURTHER INFORMATION CONTACT: Neil D. Shepherd, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This temporary regulation (REG–155608–02) amends the Employment Tax Regulations (26 CFR part 31) by providing guidance relating to section 3121(a)(5)(D). The Federal Insurance Contributions Act (FICA) imposes taxes on employees and employers equal to a percentage of the wages received with respect to employment. Code section 3121(a) defines wages for FICA tax purposes as all remuneration for employment unless otherwise excepted. Code section 3121(a)(5)(D), added by the Social Security Amendments of 1983 (Public Law 98–21 (97 Stat. 65)), generally excepts from wages payments made by an employer for the purchase of an annuity contract described in section 403(b). In a codification of long-standing administrative practice, however, section 3121(a)(5)(D) expressly excludes from the exception payments made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise). *See* Rev. Rul. 65–208, 1965–2 C.B. 383, and S. Rep. No. 98–23, at 41, 98th Cong., 1st Sess. (1983). This temporary regulation defines the term ''salary reduction agreement'' for purposes of section 3121(a)(5)(D).

Explanation of Provisions

The FICA taxation of payments made by an employer for the purchase of annuity contracts described in section 403(b) has been shaped by a congressional concern for the social security revenue base and for employees' social security benefits. In the context of contributions for the purchase of such annuity contracts, Congress has interpreted the term ''wages'' for FICA tax purposes more broadly than the term ''gross income'' for income tax purposes. *See* S. Rep. No. 98–23, at 39, 98th Cong., 1st Sess. (1983) relating to the Social Security Amendments of 1983 (Public Law 98–21 (97 Stat. 65)).

An amount is generally includible in wages for FICA tax purposes at the time it is actually or constructively paid by the employer and received by the employee. Additionally, wages generally include an amount that an employer contributes to a plan only if the employee agrees to reduce his or her compensation. For income tax purposes, however, section 403(b) provides an exclusion from gross income for contributions made by an employer, including contributions made pursuant to a cash or deferred election or other salary reduction agreement. *See* section 1450(a) of the Small Business Job Protection Act of 1996 (Public Law 104–188 (110 Stat. 1755)). Conversely, for FICA tax purposes, wages include contributions made by an employer to a section 403(b) contract pursuant to a cash or deferred election or other salary reduction agreement. *See* S. Rep. No. 98–23, at 40–41, 98th Cong., 1st Sess. (1983). Thus, while section 403(b) excludes from gross income contributions made pursuant to certain cash or deferred elections, such contributions are made by reason of a salary reduction agreement under section 3121(a)(5)(D) and are included in wages for FICA tax purposes. Consequently, this temporary regulation explicitly provides that the term ''salary reduction agreement'' includes a plan or arrangement whereby a payment will be made if the employee elects to reduce his or her compensation pursuant to a cash or deferred election as defined at § 1.401(k)–1(a)(3) of the Income Tax Regulations.

Pursuant to regulation § 1.401(k)–1(a)(3)(iv) of this chapter, a cash or deferred election does not include a one-time irrevocable election made upon an employee's commencement of employment with the employer. Similarly, pursuant to section 402(g)(3), while the term ''elective deferrals'' generally includes any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), an employer contribution made pursuant to a one-time irrevocable election is not treated as an elective deferral. *See* H.R. Rep. No. 100–795, at 145, 100th Cong., 2d Sess. (1988) and S. Rep. No. 100–445, at 151, 100th Cong., 2d Sess. (1988) relating to the amendment of section 402(g)(3) by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647 (102 Stat. 3342)). Notwithstanding that section 403(b) contributions made pursuant to a one-time irrevocable election are excluded from cash or deferred elections under section 401(k) and from elective deferrals under section 402(g)(3), such contributions are made pursuant to a salary reduction agreement. If the employee had not made a one-time irrevocable election, the employer's cash payment to the employee would be includible in the employee's gross income and in wages for FICA tax purposes. Consequently, this temporary regulation explicitly provides that the term ''salary reduction agreement'' includes a plan or arrangement whereby a payment will be made if the employee elects to reduce his or her compensation pursuant to a one-time irrevocable election made at or before the time of

initial eligibility to participate in such plan or arrangement (or pursuant to a similar arrangement involving a one-time irrevocable election).

A contribution that is made as a condition of employment and that reduces an employee's compensation generally constitutes an employee contribution includible in wages for FICA tax purposes. *See* section 1015 of the Employee Retirement Income Security Act of 1974 (Public Law 93–406 (88 Stat. 829)) relating to amounts designated as employee contributions under section 414(h) of the Code; *see also* H.R. Rep. No. 93–807, at 145, 93d Cong., 2d Sess. (1974) wherein Congress stated that ''[u]nder present law, contributions which are designated as employee contributions are generally treated as employee contributions for purposes of the Federal tax law.'' Code section 414(h)(1) merely codified the existing administrative and judicial treatment of amounts designated as employee contributions. *See,* for example, *Howell* v. *United States,* 775 F.2d 887 (7th Cir. 1985) holding that mandatory contributions to a state retirement plan of amounts designated as employee contributions and withheld from the employee's salary are employee contributions includible in the employee's gross income. Thus, as with employer contributions made pursuant to cash or deferred elections and one-time irrevocable elections, employer contributions that are made as a condition of employment and in lieu of mandatory employee contributions and that reduce an employee's compensation are amounts otherwise includible in wages for FICA tax purposes.

Whether a contribution that reduces an employee's compensation is required by statute, contract, or otherwise, an employee implicitly agrees to the contribution as a condition of employment. The acceptance of employment and the subsequent performance of services manifests the employee's agreement to the contribution. *See* H.R. Conf. Rep. No. 98–861, at 1415, 98th Cong., 2d Sess. (1984) relating to the amendment of section 3121(v)(1)(B), wherein Congress stated that ''[t]he conferees intend that the term salary reduction agreement also includes any salary reduction arrangement, regardless of whether there is approval or choice of participation by individual employees or whether such approval or choice is mandated by State statute.'' In *Public Employees' Retirement Board* v. *Shalala,* 153 F.3rd 1160, at 1166 (10th Cir. 1998), the court noted that ''an employee's decision to go to work or continue to work * * * constitutes conduct manifesting assent to a salary reduction.'' Accordingly, the court held that a designated employee contribution picked up by an employer with a corresponding reduction in the employee's gross salary constitutes a contribution made pursuant to a salary reduction agreement. Similarly, this temporary regulation explicitly provides that the term ''salary reduction agreement'' includes a plan or arrangement whereby a payment will be made if the employee agrees as a condition of employment (whether such condition is set by statute, contract, or otherwise) to make a contribution that reduces the employee's compensation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to this regulation. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section in the preamble to the notice of proposed rule making published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of this regulation is Neil D. Shepherd, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Amendments to the Regulations

■ Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 31.3121(a)(5)–2T is added to read as follows:

§ 31.3121(a)(5)–2T Payments under or to an annuity contract described in section 403(b) (temporary).

(a) *Salary reduction agreement defined.* For purposes of section 3121(a)(5)(D), the term *salary reduction agreement* means a plan or arrangement (whether evidenced by a written instrument or otherwise) whereby payment will be made by an employer, on behalf of an employee or his or her beneficiary, under or to an annuity contract described in section 403(b)—

(1) If the employee elects to reduce his or her compensation pursuant to a cash or deferred election as defined at § 1.401(k)–1(a)(3) of this chapter;

(2) If the employee elects to reduce his or her compensation pursuant to a one-time irrevocable election made at or before the time of initial eligibility to participate in such plan or arrangement (or pursuant to a similar arrangement involving a one-time irrevocable election); or

(3) If the employee agrees as a condition of employment (whether such condition is set by statute, contract, or otherwise) to make a contribution that reduces his or her compensation.

(b) *Effective date.*

(1) This section is applicable November 16, 2004.

(2) The applicability of this section expires on or before November 15, 2007.

Approved: November 1, 2004.

Nancy Jardini,

Acting Deputy Commissioner for Services and Enforcement.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–25236 Filed 11–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–04–136]

Drawbridge Operation Regulations; Broward County Bridges, Atlantic Intracoastal Waterway, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the

regulations governing the operation of the Broward County bridges across the Atlantic Intracoastal Waterway, Broward County, Florida. This temporary deviation allows the Coast Guard to test an operating schedule with the bridges opening twice an hour. It will allow the Coast Guard to gather data to determine if this schedule meets the reasonable needs of navigation while accommodating an increase in vehicle traffic throughout the county and whether it should be proposed as a permanent change.

DATES: This deviation is effective from 6 a.m. on December 1, 2004, until 8 p.m. on February 28, 2005. Comments must reach the Coast Guard on or before March 15, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131. Comments and material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–04–136] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to comment on this test schedule by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice [CGD07–04–136], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Discussion of the Test Schedule

This test schedule has been requested by various public officials within the County of Broward to ease vehicular traffic, which has overburdened roadways, and to standardize bridge openings for vessel traffic. This test will allow the bridges in Broward County to operate on a standardized schedule, which will meet the reasonable needs of navigation and improve the vehicular traffic. The schedules will be staggered in order to facilitate the movement of vessels from bridge to bridge along the Atlantic Intracoastal Waterway.

The existing regulations governing the operation of the County bridges are published in 33 CFR 117.5 and 117.261. This temporary deviation includes all bridges across the Atlantic Intracoastal Waterway in Broward County. During the deviation period, from 6 a.m. on December 1, 2004, until 8 p.m. on February 28, 2005, the bridges will operate as follows:

Open on the Hour and Half Hour: Atlantic Boulevard, mile 1056.0, Commercial Boulevard, mile 1059.0, East Sunrise Boulevard, mile 1062.6, SE. 17th Street Causeway, mile 1065.9, Dania Beach Boulevard, mile 1069.4, Hollywood Boulevard, mile 1072.2.

Open on the Quarter Hour and Three-Quarter Hour: NE. 14th Street, mile 1055.0, Oakland Park Boulevard, mile 1060.5, East Las Olas Boulevard, mile 1064.0, Sheridan Street, mile 1070.5, Hallandale Beach Boulevard, mile 1074.0.

If at any time during this test deviation it is determined that the test schedule poses any safety concerns at any location, this test deviation may be withdrawn.

The District Commander has granted a test deviation from the operating regulations listed in 33 CFR 117.5 and 117.261 to evaluate the effectiveness of these new schedules on vehicular and vessel traffic.

Dated: November 4, 2004.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 04–25413 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–096]

RIN 1625–AA09

Drawbridge Operation Regulations: Annisquam River, Danvers River, Fore River, and Saugus River, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of four Massachusetts Highway Department bridges; the Blynman (SR127) Bridge, mile 0.0, across the Annisquam River; the Kernwood Bridge, mile 1.0, across the Danvers River; the Quincy Weymouth SR3A Bridge, mile 2.8, across the Fore River; and the Fox Hill (SR107) Bridge, mile 2.5, across the Saugus River, Massachusetts. This final rule allows the four bridges to operate on an advance notice basis from noon to 6 p.m. on Thanksgiving Day each year. This action is expected to allow the draw tenders to spend the holiday with their families while still meeting the reasonable needs of navigation.

DATES: This rule is effective on November 25, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–096) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Bridge Administrator, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 1, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations, Annisquam River, Danvers River, Fore River, and Saugus River, Massachusetts, in the **Federal Register** (69 FR 53376). The Coast Guard provided a 30-day comment period to the public to comment on the proposed rule. We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard believes making this final rule effective less than 30 days after publication, in time for Thanksgiving Day, November 25, 2004, is reasonable because there have been no requests to open these bridges on Thanksgiving Day in past years and any mariner requiring a bridge opening during the advance notice time period on Thanksgiving Day noon to 6 p.m. need only provide the one-hour advance notice for a bridge opening at any time.

Background and Purpose

Annisquam River and Blynman Canal

The Blynman (SR127) Bridge, mile 0.0, across the Annisquam River has a vertical clearance of 7 feet at mean high water and 16 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.586.

Danvers River

The Kernwood Bridge, at mile 1.0, across the Danvers River has a vertical clearance of 8 feet at mean high water and 17 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.595(c).

Fore River

The Quincy Weymouth (SR3A) Bridge, at mile 2.8, across the Fore River has a vertical clearance of 45 feet at mean high water and 55 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.621.

Saugus River

The Fox Hill (SR107) Bridge, at mile 2.5, across the Saugus River has a vertical clearance of 6 feet at mean high water and 16 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.618(c).

The owner of the bridges, Massachusetts Highway Department (MHD), requested a change to the drawbridge operation regulations to allow the four bridges to operate on an advance notice basis on Thanksgiving Day each year.

The existing drawbridge operation regulations already allow the four bridges to operate on an advance notice basis on Christmas and New Years Day each year. Therefore, it is expected that adding Thanksgiving Day to that existing requirement should not impact navigation adversely since there have been very few requests to open these bridges on Thanksgiving Day in past years.

The Coast Guard believes this rule is reasonable because the bridges would still open on demand at any time on Thanksgiving Day after the advance notice is given.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. Therefore, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that the bridges will continue to open on signal at any time after the advance notice is given.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridges will continue to open on signal at any time after the advance notice is given.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Revise § 117.586 to read as follows:

§ 117.586 Annisquam River and Blynman Canal.

The draw of the Blynman (SR127) Bridge shall open on signal, except that, from noon to 6 p.m. on Thanksgiving Day, 6 p.m. on December 24 to midnight on December 25, and from 6 p.m. on December 31 to midnight on January 1, the draw shall open on signal if at least a two-hour advance notice is given by calling the number posted at the bridge.

■ 3. Section 117.595 is amended by revising paragraph (c) to read as follows:

§ 117.595 Danvers River.

* * * * *

(c) The Kernwood Bridge, at mile 1.0, shall operate as follows:

(1) From May 1 through September 30, midnight to 5 a.m., and from October 1 through April 30, 7 p.m. to 5 a.m., draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

(2) From noon to 6 p.m. on Thanksgiving Day and all day on Christmas and New Years Day, the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

■ 4. Section 117.618 is amended by revising paragraph (c) to read as follows:

§ 117.618 Saugus River.

* * * * *

(c) The Fox Hill (SR107) Bridge, at mile 2.5, shall operate as follows:

(1) The draw shall open on signal, except that, from October 1 through May 31, from 7 p.m. to 5 a.m., the draw shall open after at least a one-hour advance notice is given by calling the number posted at the bridge.

(2) From noon to 6 p.m. on Thanksgiving Day, and all day on Christmas, and New Years Day, the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

■ 5. Section 117.621 is amended by revising paragraph (c) to read as follows:

§ 117.621 Fore River.

* * * * *

(c) From noon to 6 p.m. on Thanksgiving Day, from 6 p.m. on December 24 to midnight on December 25, and from 6 p.m. on December 31 to midnight on January 1, the draw shall open on signal after at least a two-hour advance notice is given by calling the number posted at the bridge.

Dated: November 4, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–25412 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 309–0468a; FRL–7834–3]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) and sulfur compounds into the atmosphere from industrial processes. We are approving local rules that administer regulations and regulate emission sources under the Clean Air Act as amended (CAA or the Act).

DATES: This rule is effective on January 18, 2005, without further notice, unless EPA receives adverse comments by December 16, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118 or *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
ICAPCD	403	General Limitations on the Discharge of Air Contaminants	05/18/04	07/19/04
ICAPCD	405	Sulfur Compounds Emissions Standards, Limitations and Prohibitions.	05/18/04	07/19/04

On August 10, 2004, the submittal of ICAPCD Rules 403 and 405 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We finalized a limited approval/limited disapproval of a previous version of ICAPCD Rule 403 on March 24, 2003 (68 FR 14161). We finalized a limited approval/limited disapproval of a previous version of ICAPCD Rule 405 on February 7, 2002 (67 FR 5727). There were sanction implications on our action on Rule 403 but not on Rule 405.

C. What Are the Purposes of the Submitted Rule Revisions?

PM–10 and sulfur compounds harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 and sulfur oxide emissions.

The purposes of the revisions to Rule 403 are as follows:

- To limit the duration of the exemption from emission standards for the startup or shutdown period and when changing conditions to bring the process up to operating levels.
- To require periodic demonstrations of compliance with source tests of PM–10 emissions.
- To require a 5-year records retention period. The purpose of the revisions to Rule 405 are as follows:
- To allow demonstration of compliance with sulfur compound emissions by using the supplier's analysis of sulfur content of the fuel.
- To require 2-year records retention period, except for a 5-year retention period for a major source.
- To update the issue date of ASTM test procedures.

The revisions described above correct the deficiencies cited in the previous limited approval/limited disapprovals of Rules 403 and 405.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, PM–10 SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(1) and 193).

Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas with significant PM–10 sources to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT). RACM/RACT is not required for source categories that are not significant (*de minimis*) and do not have major sources. *See Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998 (August 16, 1994). Based on the latest emissions inventory data contained in *Imperial County PM–10 State Implementation Plan Attainment Demonstration,* Draft Report (July 2001), Imperial County has at least three major PM sources: Santa Fe Pacific Gold Corp (541 tpy), U.S. Gypsum (Plaster City) (156 tpy), and American Girl Mine (136 tpy). Therefore, we conclude that submitted rule 403 must meet RACM/RACT in the absence of a demonstration by the State that these major sources do not contribute significantly to PM–10 levels which exceed the PM–10 NAAQS in the area. We also note that ICAPCD's Draft Report, which formed a basis for our 2001 attainment finding, refers to Rule 403 as one of the controls that should fulfill RACM/RACT for stationary sources in Imperial County (see pages 37–38 of that report).

The ICAPCD is in attainment for sulfur oxides, therefore there is no RACT requirement for Rule 405.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992).
- *PM–10 Guideline Document* (EPA–452/R–93–008).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACM/RACT.

The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving Rules 403 and 405 because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**,

we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 16, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 18, 2005. This will incorporate these rules into the federally-enforceable SIP and will permanently terminate all sanction and FIP implications of our limited disapproval of a previous version of Rule 403.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 13, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(332) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(332) Amended regulations for the following APCDs were submitted on July 19, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) Imperial County Air Pollution Control District.

(*1*) Rule 403, adopted on November 19, 1985 and revised on May 18, 2004 and Rule 405, adopted prior to November 4, 1977 and revised on May 18, 2004.

[FR Doc. 04–25300 Filed 11–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 309–0468c; FRL–7834–5]

Interim Final Determination To Stay Sanctions, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay imposition of sanctions based on a proposed approval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern ICAPCD Rule 403.

DATES: This interim final determination is effective on November 16, 2004. However, comments will be accepted until December 16, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118 or *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

On March 24, 2003 (68 FR 14161), we published a limited approval and limited disapproval of ICAPCD Rule 403 as adopted locally on July 24, 2001, and submitted by the State on October 30, 2001. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after April 23, 2004, and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On May 18, 2004, ICAPCD adopted revisions to Rule 403 that were intended to correct the deficiencies identified in our limited disapproval action. On July 19, 2004, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have given proposed approval of this submittal because we believe it corrects the deficiencies identified in our March 24, 2003, disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay imposition of sanctions that were triggered by our March 24, 2003, limited disapproval.

EPA is providing the public with an opportunity to comment on this stay of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed approval of revised ICAPCD Rule 403, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of the proposed rule approval.

II. EPA Action

We are making an interim final determination to stay CAA section 179 sanctions associated with ICAPCD Rule 403 based on our concurrent proposed approval of the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of November 16, 2004. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 13, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 04–25299 Filed 11–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA120–REC; FRL–7837–9]

Corrections to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the deletion of various local rules from the California State Implementation Plan (SIP) that were incorporated into the SIP in error. These primarily include rules concerning procedures before the local hearing board, local fees, enforcement authorities, posting of permits, administrative permit requirements, and appeals. EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus harmful to affected sources, local agencies and to EPA. The intended effect of this final action is to delete these rules and make the SIP consistent with the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Effective Date: This rule is effective on December 16, 2004.

ADDRESSES: You may inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You may also see copies of the rules at the locations listed in **SUPPLEMENTARY INFORMATION** under ''Public Inspection.''

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 947–4126. E-mail: *rose.julie@EPA.gov.*

SUPPLEMENTARY INFORMATION:

Public Inspection

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184

Calaveras County Air Pollution Control District, 891 Mountain Ranch Road, San Andreas, CA 95249–9709

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667–4100

Feather River Air Quality Management District, 938–14th Street, Marysville, CA 95901–4149

Glenn County Air Pollution Control District, 720 North Colusa Street, Willows, CA 95988–0351

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

Kern County (Southeast Desert) Air Pollution Control District, 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370

Lake County Air Quality Management District, 883 Lakeport Blvd., Lakeport, CA 95453–5405

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215

Mariposa County Air Pollution Control District, 5110 Bullion Street, Mariposa, CA 95338

Mendocino County Air Quality Management District, 306 E. Gobbi Street, Ukiah, CA 95482

Modoc County Air Pollution Control District, 202 W. Fourth Street, Alturas, CA 96101

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501–3327

Northern Sierra Air Quality Management District, 200 Litton Drive, Suite 320, Grass Valley, CA 95945–2509

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA 93726

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, CA 96097–3036

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765
Tehama County Air Pollution Control District, 1750 Walnut Street, Red Bluff, CA 96080
Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310
Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003
Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616

Throughout this document wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

Table of Contents

I. Proposed Action

On January 22, 2004 (69 FR 3045), EPA proposed to delete various rules from the California SIP, after determining that they had been approved into the SIP in error. Most of these rules fall into one of the following categories:

A. Rules that govern local hearing board procedures and other administrative requirements such as the frequency of meetings, salaries paid to board members, and petitioning for a local hearing.

B. Administrative permit rules such as those that describe procedures for action, denial, appeal, reinstatement, and posting of permits to operate. Substantive local requirements to fulfill CAA new source review and operating permit provisions are Federally approved or delegated elsewhere.

C. Variance provisions that provide for modification of the requirements of the applicable SIP. The variance procedures included in today's action are based in State law. *See* California Health & Safety Code §§ 42350–64. State or district-issued variances provide an applicant with a mechanism to obtain relief from state enforcement of a State or local rule under certain conditions. Pursuant to Federal law, specifically section 110(i) of the Clean Air Act, 42 U.S.C. 7410(i), neither EPA nor a State may revise a State Implementation Plan (SIP) by issuing an ''order, suspension, plan revision or other action modifying any requirement of an applicable implementation plan'' without a plan promulgation or revision. EPA and California have long recognized that a state-issued variance, though binding as a matter of State law, does not prevent EPA from enforcing the underlying SIP provisions unless and until EPA approves that variance as a SIP revision. The variance provisions included in today's action are deficient for various reasons, including their failure to address the fact that a state or district-issued variance has no effect on Federal enforceability unless the variance is submitted to and approved by EPA as a SIP revision. Therefore, their inclusion in the SIP is inconsistent with the Act and may be confusing to regulated industry and the general public. Moreover, because state-issued variances require independent EPA approval in order to modify the substantive requirements of a SIP, removal of these variance provisions from the SIP will have no effect on regulated entities. *See Industrial Environmental Association* v. *Browner*, No. 97–71117 (9th Cir., May 26, 2000).

D. Various provisions describing local agency investigative or enforcement authority including the authority to inspect, make arrests, issue violation notices, and issue orders for abatement. States may need to adopt such rules to demonstrate adequate enforcement authority under section 110(a)(2) of the Act, but they should not be approved into the applicable SIP to avoid potential conflict with EPA's independent authorities provided in § 113, § 114 and elsewhere.

E. Local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any public comments.

III. EPA Action

Based on further review, we have decided not to finalize our proposed removal of Rule 230, Action on Applications from the Mendocino County Air Pollution Control District (MCAPCD) portion of the California SIP. These provisions appear appropriate for inclusion in the SIP.

As authorized in section 110(k)(6) of the Act, EPA is deleting all the rules listed in the proposal from the California SIP, with the exception of MCAPCD Rule 230 as noted above.

In this action, EPA is also reinserting a paragraph listing EPA-approved rules of the California SIP that were inadvertently deleted from Title 40 of the Code of Federal Regulations, part 52, § 52.220, paragraph (c)(31)(i)(A). On December 8, 1976, at 41 FR 53661, EPA published a final rulemaking action approving Rules 200 to 216 of the Great Basin Unified Air Pollution Control District submitted by the California Air Resources Board as revisions to the California SIP. The listing of these rules was inadvertently deleted from the Code of Federal Regulations. Two of these provisions, Rules 211 and 214, are being removed from the SIP in the new paragraph 52.220(c)(31)(i)(H). With these changes, the CFR description of the SIP will be up to date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Nor will it have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23,

1997), because it is not economically significant.

In this action, EPA is not developing or adopting a technical standard. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 18, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: October 22, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs: (b)(2)(iii), (b)(2)(iv), (b)(7)(ii), (b)(10)(ii), (b)(12) through (14), (c)(6)(i)(D), (c)(6)(ii)(C), (c)(6)(iii)(C), (c)(6)(iv)(C), (c)(6)(v)(C), (c)(6)(vi)(C) through (D), (c)(6)(vii)(C), (c)(6)(viii)(B), (c)(6)(ix)(B), (c)(6)(x)(C), (c)(6)(xi)(C), (c)(6)(xii)(C), (c)(6)(xiii)(C), (c)(6)(xiv)(C), (c)(6)(xvi)(C), (c)(6)(xx)(B), (c)(6)(xxiii) through (xxiv), (c)(21)(viii)(C), (c)(21)(xiv)(C), (c)(24)(iv)(C), (c)(24)(vii)(F) through (G), (c)(24)(x)(F), (c)(25)(i)(F), (c)(25)(ii)(E), (c)(26)(viii)(D), (c)(26)(ix)(C), (c)(26)(xvi)(F), (c)(26)(xvii)(E) through (G), (c)(27)(vii)(E), (c)(27)(viii)(E), (c)(28)(iv)(C), (c)(31)(i)(A), (c)(31)(i)(H) and (I), (c)(31)(vi)(F), (c)(31)(xviii)(G), (c)(32)(iii)(G), (c)(35)(xii)(I), (c)(35)(xiii)(E), (c)(35)(xv)(G), (c)(37)(v)(E), (c)(39)(ii)(H) through (I), (c)(39)(iv)(H) and (I), (c)(39)(vii)(E), (c)(39)(viii)(E), (c)(39)(x)(E), (c)(41)(x)(H) through (I), (c)(42)(x)(D), (c)(47)(i)(E) through (G), (c)(51)(xiii)(D), (c)(51)(xiv)(E), (c)(51)(xx)(D), (c)(52)(xiii)(F), (c)(52)(xvi)(D), (c)(56)(ii)(D), (c)(58)(iii)(C), (c)(65)(iv) through (v), (c)(79)(v)(B), (c)(80)(i)(F), (c)(81)(i)(C), (c)(85)(vi)(D), (c)(85)(x)(C), (c)(89)(iii)(D), (c)(93)(iii)(D), (c)(93)(iv)(E), (c)(95)(vi)(B), (c)(96)(iii)(D), (c)(98)(i)(F), (c)(103)(xiii)(D), (c)(103)(xvii)(D), (c)(119)(i)(E), (c)(119)(ii)(B), (c)(124)(ii)(C), (c)(124)(vii)(D), (c)(127)(i) introductory text, (c)(127)(vii)(H) through (I), (c)(137)(vi)(C), (c)(137)(vii)(E) through (H), (c)(138)(ii)(F), (c)(155)(v)(D), (c)(159)(iii)(G), (c)(164)(i)(A)(*3*), (c)(168)(i)(A)(*6*), (c)(168)(i)(E)(*4*), (c)(171)(i)(D)(*6*), (c)(172)(i)(A)(*4*), (c)(173)(i)(B)(*3*), (c)(175)(i)(A)(*2*), (c)(175)(i)(B)(*3*), (c)(177)(i)(D)(*4*), (c)(179)(i)(E)(*5*),(c)(184)(i)(B)(*11*), (c)(199)(i)(D)(*9*), (c)(202)(i)(F)(*2*), (c)(230)(i)(E)(*2*), and (c)(262)(i)(A)(*2*), and by revising (c)(127) introductory text.

The additions and revision read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(2) * * *

(iii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement for implementation in the Lake Tahoe Air Basin, Rules 2–17, 2–18, 2–19, and 2–20.

(iv) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement for implementation in the Mountain Counties Air Basin, Rules 2–17, 2–18, 2–19, 2–20.

* * * * *

(7) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 17, 18, and 19.

* * * * *

(10) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 2.4, 2.6, and 5.1 to 5.18.

* * * * *

(12) California Air Resources Board.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, California Health & Safety Code §§ 24292, 24296 to 24303 (Variances); §§ 24310 to 24323 (Procedure); and §§ 24362.6 to 24363 and 24365.1 to 24365.12 (Rules and Regulations).

(13) El Dorado County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 77, 78, 79, and 80.

(14) Imperial County Air Pollution Control District.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 110.

* * * * *

(c) * * *

(6) * * *

(i) * * *

(D) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 18, 22, 23, and 24.

(ii) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 204, 206, 210, 211, 212, and 213.

(iii) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 1.6, 2.9, 2.10, 2.11, 2.12, and 4.2.

(iv) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 206.

(v) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 53, 54, 55, and 97.

(vi) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6)

of this section and now deleted without replacement for implementation in Kern County, Southeast Desert Air Basin, Rules 204, 206, 210, 211, 212, and 213.

(D) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement for implementation in Kern County, San Joaquin Valley Air Basin, Rules 107, 109, 206, 303, and 304.

(vii) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 206 and 518.

(viii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 2.02, 2.04, 2.06, 2.10, 2.11, 2.12, and 2.13.

(ix) * * *

(B) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 206.

(x) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 206.

(xi) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 2.02, 2.04, 2.06, 2.10, 2.12, and 2.13.

(xii) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 206.

(xiii) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 206.

(xiv) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 206.

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(xvi) * * *

(C) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rules 013, 015, 019, 020, 021, and 022.

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(xx) * * *

(B) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 16.

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(xxiii) Shasta County Air Pollution Control District.

(A) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 2.17 and 2.22.

(xxiv) Ventura County Air Pollution Control District.

(A) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 22.

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(21) * * *

(viii) * * *

(C) Previously approved on August 22, 1977 in paragraph (c)(21)(viii)(A) of this section and now deleted without replacement, Rule 4.11.

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(xiv) * * *

(C) Previously approved on June 14, 1978 in paragraph (c)(21)(xiv)(A) of this section and now deleted without replacement, Rule 5.18.

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(24) * * *

(iv) * * *

(C) Previously approved on August 22, 1977 in paragraph (c)(iv)(A) of this section and now deleted without replacement, Rule 518.

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(vii) * * *

(F) Previously approved on August 22, 1977 in paragraph (c)(vii)(A) of this section and now deleted without replacement for implementation in Kern County, Southeast Desert Air Basin, Rule 518.

(G) Previously approved on August 22, 1977 in paragraph (c)(vii)(A) of this section and now deleted without replacement for implementation in Kern County, San Joaquin Valley Air Basin, Rule 518.

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(x) * * *

(F) Previously approved on August 15, 1977 in paragraph (c)(x)(A) of this section and now deleted without replacement, Rule 3.

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(25) * * *

(i) * * *

(F) Previously approved on August 22, 1977 in paragraph (c)(25)(i)(A) of this section and now deleted without replacement, Rule 518.

(ii) * * *

(E) Previously approved on August 22, 1977 in paragraph (c)(25)(ii)(A) of this section and now deleted without replacement, Rule 519.

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(26) * * *

(viii) * * *

(D) Previously approved on August 22, 1977 in paragraph (c)(26)(viii)(A) of this section and now deleted without replacement, Rule 617.

(ix) * * *

(C) Previously approved on August 22, 1977 in paragraph (c)(26)(ix)(A) of this section and now deleted without replacement Rules 619 and 620.

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(xvi) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(26)(xvi)(B) of this section and now deleted without replacement, Rule 717.

(xvii) * * *

(E) Previously approved on June 14, 1978 in paragraph (c)(26)(xvii)(A) of this section and now deleted without replacement Rule 717 (Lake Tahoe Air Basin).

(F) Previously approved on June 14, 1978 in paragraph (c)(26)(xvii)(A) of this section and now deleted without replacement Rules 705 and 717 (Mountain Counties Air Basin).

(G) Previously approved on June 14, 1978 in paragraph (c)(26)(xvii)(A) of this section and now deleted without replacement Rules 701, 705, 707, 711 to 714, 716, and 717 (Sacramento Valley Air Basin).

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(27) * * *

(vii) * * *

(E) Previously approved on June 14, 1978 in paragraph (c)(27)(vii)(A) of this section and now deleted without replacement Rule 717.

(viii) * * *

(E) Previously approved on June 14, 1978 in paragraph (c)(27)(viii)(A) and now deleted without replacement Rules 701, 702, 704 to 709, and 711 to 717.

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(28) * * *

(iv) * * *

(C) Previously approved on August 22, 1977 in paragraph (c)(28)(iv)(A) of this section and now deleted without replacement Rule 717.

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(31) * * *

(i) * * *

(A) Rules 200 to 216.

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(H) Previously approved on December 8, 1976 in paragraph (c)(31)(i)(A) of this section and now deleted without replacement Rules 211 and 214.

(I) Previously approved on June 6, 1977 in paragraph (c)(31)(i)(B) of this section and now deleted without replacement Rules 107 and 616.

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(vi) * * *

(F) Previously approved on November 9, 1978 in paragraph (c)(31)(vi)(C) of this section and now deleted without

replacement for implementation in the Antelope Valley Air Pollution Control District, Rules 211, 214, 215, and 216.

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(xviii) * * *

(G) Previously approved on January 24, 1978 in paragraph (c)(31)(xviii)(B) of this section and now deleted without replacement Rule 717.

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(32) * * *

(iii) * * *

(G) Previously approved on June 14, 1978 in paragraph (c)(32)(iii)(C) of this section and now deleted without replacement Rules 505 and 518.

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(35) * * *

(xii) * * *

(I) Previously approved on February 1, 1984 in paragraph (c)(35)(xii)(E) of this section and now deleted without replacement Rules 202, 206, 207, and 208.

(xiii) * * *

(E) Previously approved on March 22, 1978 in paragraph (c)(35)(xiii)(A) of this section and now deleted without replacement for implementation in the San Joaquin Valley Air Basin, Rule 104.

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(xv) * * *

(G) Previously approved on November 7, 1978 in paragraph (c)(35)(xv)(C) of this section and now deleted without replacement Rule 630.

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(37) * * *

(v) * * *

(E) Previously approved on December 6, 1979 in paragraph (c)(37)(v)(B) of this section and now deleted without replacement Rule 717.

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(39) * * *

(ii) * * *

(H) Previously approved on September 8, 1978 in paragraph (c)(39)(ii)(C) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District, Rule 517.

(I) Previously approved on November 9, 1978 in paragraph (c)(39)(ii)(B) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District, Rules 210, 211, and 214 to 216.

* * * * *

(iv) * * *

(H) Previously approved on November 9, 1978 in paragraph (c)(39)(iv)(B) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District, Rules 210, 211, and 214 to 216.

(I) Previously approved on September 8, 1978 in paragraph (c)(39)(iv)(C) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District, Rule 517.

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(vii) * * *

(E) Previously approved on August 16, 1978 in paragraph (c)(39)(vii)(A) of this section and now deleted without replacement Rule 514.

(viii) * * *

(E) Previously approved on September 14, 1978 in paragraph (c)(39)(viii)(A) of this section and now deleted without replacement Rules 600, 612, 613, 614, 615, 616, and 617.

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(x) * * *

(E) Previously approved on September 14, 1978 in paragraph (c)(39)(x)(A) of this section and now deleted without replacement Rule 514.

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(41) * * *

(x) * * *

(H) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement Rule 706 (Mountain Counties Air Basin).

(I) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement Rules 702 to 704, 706, 708 to 710, and 715 (Sacramento Valley Air Basin).

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(42) * * *

(x) * * *

(D) Previously approved on November 6, 1978 in paragraph (c)(42)(x)(A) of this section and now deleted without replacement Rules 700, 703, and 710.

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(47) * * *

(i) * * *

(E) Previously approved on May 9, 1980 in paragraph (c)(47)(i)(A) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1231.

(F) Previously approved on May 9, 1980 in paragraph (c)(47)(i)(A) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District (Riverside County), Rules 1201 to 1205, 1209 to 1211, 1214, 1217, 1220, 1221, 1223, and 1224.

(G) Previously approved on May 9, 1980 in paragraph (c)(47)(i)(A) of this section and now deleted without replacement for implementation in the South Coast Air Quality Management District, Rules 1201 to 1205, 1209 to 1211, 1214, 1217, 1220, 1221, 1223, and 1224.

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(51) * * *

(xiii) * * *

(D) Previously approved on May 18, 1981 in paragraph (c)(51)(xiii)(A) of this section and now deleted without replacement Rules 204, 207, 208, 209, 513, 517, and 519.

(xiv) * * *

(E) Previously approved on May 18, 1981 in paragraph (c)(51)(xiv)(A) of this section and now deleted without replacement Rules 702 to 704 and 707 to 710.

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(xx) * * *

(D) Previously approved on June 18, 1982 in paragraph (c)(51)(xx)(A) of this section and now deleted without replacement Rules 8 and 127.

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(52) * * *

(xiii) * * *

(F) Previously approved on May 18, 1981 in paragraph (c)(52)(xiii)(D) of this section and now deleted without replacement Rules 504, 506, 512, and 513.

* * * * *

(xvi) * * *

(D) Previously approved on January 26, 1982 in paragraph (c)(52)(xvi)(A) of this section and now deleted without replacement Rules 5.0 to 5.3, 5.5 to 5.19, and 6.1 to 6.7.

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(56) * * *

(ii) * * *

(D) Previously approved on June 18, 1982 in paragraph (c)(56)(ii)(B) of this section and now deleted without replacement Rule 27.

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(58) * * *

(iii) * * *

(C) Previously approved on June 18, 1982 in paragraph (c)(51)(iii)(B) of this section and now deleted without replacement Rule 203.

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(65) * * *

(iv) Previously approved on September 28, 1981 in paragraph (c)(65)(ii) of this section and now deleted without replacement Rules 1206, 1208, 1212, 1213, 1215, 1216, 1218, 1219, 1222, and 1225 to 1230.

(v) Previously approved on September 28, 1981 in paragraph (c)(65)(ii) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District (Riverside County), Rules 1206, 1208, 1212, 1213, 1215, 1216, 1218, 1219, 1222, and 1225 to 1230.

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(79) * * *

(v) * * *

(B) Previously approved on September 28, 1981 in paragraph (c)(79)(v)(A) of this section and now deleted without replacement Rule 14.

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(80) * * *

(i) * * *

(F) Previously approved on June 23, 1982 in paragraph (c)(80)(i)(C) of this section and now deleted without replacement Rules 504, 506, and 511 to 513.

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(81) * * *

(i) * * *

(C) Previously approved on May 18, 1981 in paragraph (c)(81)(i)(A) of this section and now deleted without replacement Rules 512, 514, 519, and 520 to 524.

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(85) * * *

(vi) * * *

(D) Previously approved on April 12, 1982 in paragraph (c)(85)(vi)(A) of this section and now deleted without replacement Rules 2.7 and 2.8.

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(x) * * *

(C) Previously approved on July 6, 1982 in paragraph (c)(85)(x)(A) of this section and now deleted without replacement for implementation in Kern County, Southeast Desert Air Basin Rule 110.

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(89) * * *

(iii) * * *

(D) Previously approved on April 12, 1982 in paragraph (c)(89)(iii)(B) of this section and now deleted without replacement Rules 4.7, 4.8, 4.9, 4.10, 5.4, and 6.0.

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(93) * * *

(iii) * * *

(D) Previously approved on June 18, 1982 in paragraph (c)(93)(iii)(B) of this section and now deleted without replacement Rules 503, 504, 506, and 518 to 521.

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(iv) * * *

(E) Previously approved on June 18, 1982 in paragraph (c)(93)(iv)(B) of this section and now deleted without replacement Rules 503, 504, 506, and 518 to 521.

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(95) * * *

(vi) * * *

(B) Previously approved on June 18, 1982 in paragraph (c)(95)(vi)(A) of this section now deleted without replacement for implementation in the North Coast Unified Air Quality Management District, Rule 250.

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(96) * * *

(iii) * * *

(D) Previously approved on January 26, 1982 in paragraph (c)(96)(iii)(A) of this section and now deleted without replacement Rule 96.

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(98) * * *

(i) * * *

(F) Previously approved on April 12, 1982 in paragraph (c)(98)(i)(B) of this section and now deleted without replacement Rules 4.7, 4.9, 4.10, 5.18, 9.7, and 9.8.

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(103) * * *

(xiii) * * *

(D) Previously approved on May 27, 1982 in paragraph (c)(103)(xiii)(A) of this section and now deleted without replacement Rule 710.

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(xvii) * * *

(D) Previously approved on May 27, 1982 in paragraph (c)(103)(xvii)(A) of this section and now deleted without replacement Rules 503, 504, 506, and 518 to 521.

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(119) * * *

(i) * * *

(E) Previously approved on May 27, 1982 in paragraph (c)(119)(i)(A) of this section and now deleted without replacement Rule 520.

(ii) * * *

(B) Previously approved on June 18, 1982 in paragraph (c)(119)(ii)(A) of this section and now deleted without replacement Rule 250.

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(124) * * *

(ii) * * *

(C) Previously approved on November 10, 1982 in paragraph (c)(124)(ii)(A) of this section and now deleted without replacement Rules 631 and 660.1 to 660.3.

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(vii) * * *

(D) Previously approved on November 10, 1982 in paragraph (c)(124)(vii)(A) of this section and now deleted without replacement Rule 620.

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(127) New and amended regulations for the following APCD's submitted on February 3, 1983 by the Governor's designee.

(i) Bay Area Air Quality Management District.

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(vii) * * *

(H) Previously approved on October 19, 1984 in paragraph (c)(127)(vii)(C) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District and the Mojave Desert Air Quality Management District (Riverside County), Rule 304.

(I) Previously approved on November 18, 1983 in paragraph (c)(127)(vii)(A) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District and the Mojave Desert Air Quality Management District, Rules 302 and 303.

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(137) * * *

(vi) * * *

(C) Previously approved on February 1, 1984 in paragraph (c)(137)(vi)(A) of this section and now deleted without replacement Rule 2.18.

(vii) * * *

(E) Previously approved on October 19, 1984 in paragraph (c)(137)(vii)(B) of this section and now deleted without replacement Rules 301, 301.1, and 301.2.

(F) Previously approved on October 19, 1984 in paragraph (c)(137)(vii)(B) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District, Rules 301 to 301.2.

(G) Previously approved on February 1, 1984 in paragraph (c)(137)(vii)(A) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District (Riverside County) Rule 1207.

(H) Previously approved on February 1, 1984 in paragraph (c)(137)(vii)(A) of this section and now deleted without replacement for implementation in the South Coast Air Quality Management District Rule 1207.

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(138) * * *

(ii) * * *

(F) Previously approved on November 18, 1983 in paragraph (c)(138)(ii)(A) of this section and now deleted without replacement Rules 700, 702, and 703 (Mountain Counties Air Basin).

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(155) * * *

(v) * * *

(D) Previously approved on January 29, 1985 in paragraph (c)(155)(v)(A) of this section and now deleted without replacement Regulation 2, Rule 2–502.

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(159) * * *

(iii) * * *

(G) Previously approved on July 13, 1987 in paragraph (c)(159)(iii)(A) of this section and now deleted without replacement Rules 203, 210, and 211.

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(164) * * *

(i) * * *

(A) * * *

(*3*) Previously approved on April 17, 1987 in paragraph (c)(164)(i)(A)(*1*) of this section and now deleted without replacement Rules 504, 506, 519, and 520.

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(168) * * *

(i) * * *

(A) * * *

(*6*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(*1*) of this section and now deleted without replacement Rules 423 and 425.

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(E) * * *

(*4*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(E)(*1*) of this section and now deleted without replacement Rules 2.12 and 5.10.

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(171) * * *

(i) * * *

(D) * * *

(*6*) Previously approved on April 12, 1989 in paragraph (c)(171)(i)(D)(*1*) of this section and now deleted without replacement Rules 2:10, 2:26, 2:27, and 4:7.

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(172) * * *

(i) * * *

(A) * * *

(*4*) Previously approved on April 12, 1989 in paragraph (c)(172)(i)(A)(*1*) of this section and now deleted without replacement Rules 2.8 and 2.9.

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(173) * * *

(i) * * *

(B) * * *

(*3*) Previously approved on February 3, 1989 in paragraph (c)(173)(i)(B)(*1*) of this section and now deleted without replacement Rules 204 and 210.

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(175) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on April 17, 1989 in paragraph (c)(175)(i)(A)(*1*) of this section and now deleted without replacement Rule 2:19.

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(B) * * *

(*3*) Previously approved on April 17, 1989 in paragraph (c)(175)(i)(B)(*1*) of this section and now deleted without replacement Rule 3:15.

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(177) * * *

(i) * * *

(D) * * *

(*4*) Previously approved on April 16, 1991 in paragraph (c)(175)(i)(D)(*1*) of this section and now deleted without replacement Rule 518.

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(179) * * *

(i) * * *

(E) * * *

(*5*) Previously approved on November 4, 1996 in paragraph (c)(179)(i)(E)(*1*) of this section and now deleted without replacement Rule 2.10.

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(184) * * *

(i) * * *

(B) * * *

(*11*) Previously approved on May 13, 1999 in paragraph (c)(184)(i)(B)(*7*) of this section and now deleted without replacement Rules 214, 215, and 216.

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(199) * * *

(i) * * *

(D) * * *

(*9*) Previously approved on June 3, 1999 in paragraph (c)(199)(i)(D)(*6*) of this section and now deleted without replacement Rule 2040.

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(202) * * *

(i) * * *

(F) * * *

(*2*) Previously approved on July 7, 1997 in paragraph (c)(202)(i)(F)(*1*) of this section and now deleted without replacement Rule 3.1, paragraphs 403 and 406.

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(230) * * *

(i) * * *

(E) * * *

(*2*) Previously approved on May 2, 2001 in paragraph (c)(230)(i)(E)(*1*) of this section and now deleted without replacement Rule 422.

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(262) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on June 28, 1999 in paragraph (c)(262)(i)(A)(*1*) of this section and now deleted without replacement Regulation 1, Rules 402 and 402.1.

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[FR Doc. 04–25398 Filed 11–15–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004–19216]

RIN 2127–AD08

Federal Motor Vehicle Safety Standards; Seating Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates a rulemaking proceeding to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 207, ''Seating systems.'' NHTSA is seeking to improve motor vehicle seat performance in rear impacts. The agency has conducted extensive physical testing of seat backs, computer modeling of seated occupants in rear impacts and dynamic testing of instrumented test dummies in vehicle seats. However, additional research and data analyses are needed to allow an informed decision on a rulemaking action in this area. Since the Semi-Annual Regulatory Agenda (Unified Agenda) is intended to provide the public with information on rulemaking actions to be taken in the next year or so, and since we do not anticipate being able to take rulemaking action in this area in that time frame, we are terminating rulemaking proceedings on this issue. Research into this area will continue as time and resources allow, particularly as it relates to the goal of unifying FMVSS No. 202, ''Head restraints,'' and FMVSS No. 207 into a single comprehensive rear impact protection standard.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Louis Molino, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–1833. Fax: (202) 366–4329.

For legal issues: Eric Stas, Office of Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The agency's rulemaking activity related to the upgrade of seat back strength dates back to 1974. On March 19, 1974, NHTSA published a Notice of Proposed Rulemaking (NPRM) for FMVSS No. 207 in the **Federal Register** (39 FR 10268).[1] The NPRM proposed to: (1) Extend applicability of FMVSS No. 202 to front seats in multipurpose passenger vehicles (MPVs) and light trucks, and bus driver seats manufactured after September 1, 1976; (2) establish barrier crash testing for cars, MPVs, and light trucks; and (3) consolidate FMVSS No. 202 with FMVSS No. 207 because of the relationship between head restraints and seats.

On March 16, 1978, NHTSA published a **Federal Register** notice [2] (43 FR 11100) that invited public comments on a draft plan for motor vehicle safety and fuel economy rulemaking over a five year period (1980–1984). It noted that there were 13 active dockets for which actions had not been completed because limited resources were directed toward higher priority actions, the magnitude of the problem was not large, or NHTSA was unable to adequately document the nature and extent of the problem, and the notice stated that the agency contemplated terminating those actions. The NPRM to upgrade FMVSS No. 207 and combine it with FMVSS No. 202 was among those 13 actions. On April 26, 1979, then-Administrator Claybrook signed and published the ''Five Year Plan for Motor Vehicle and Fuel Economy Rulemaking, Calendar Years 1980–1984'' which confirmed the termination of the rulemaking for the FMVSS No. 207 upgrade and FMVSS No. 202 consolidation. Since 1989, NHTSA has granted four petitions related to seating system performance in rear impacts.

Improving seating system performance is more complex than simply increasing the strength of the seat back. A proper balance in seat back strength and compatible interaction with head restraints and seat belts must be obtained to optimize injury mitigation. Comprehensive information needed to determine that proper balance is not available, although there has been work on pieces of the problem.

II. Agency Activities

To remedy this, the agency has funded and/or performed research related to the issue of seat performance in rear impacts as priorities and resources have allowed. For example, NHTSA funded the University of Virginia to perform seat computer modeling to assess how changes in seat design might affect occupant kinematics in rear impacts.[3] Similarly, EASi Engineering Inc., was awarded a multi-year contract to address design issues for an advanced seat.[4] One of the parameters it assessed under that contract was rear seat performance. The agency itself performed static tests on 25 different vehicle seat designs to determine their force deflection characteristics.[5] More recently, NHTSA has funded dynamic sled testing of seats and seat mock-ups in simulated rear impacts at the Johns Hopkins Applied Physics Laboratory.[6] [7] In addition, over the past several years, the agency has added extra instrumentation to the test dummies and seats in vehicles tested under the FMVSS No. 301 rear impact compliance test program.

Through these programs, as well as through the work of other researchers outside the agency, we have improved our understanding of how seat performance affects rear impact occupant protection. Part of that understanding relates to how head restraints and seat backs work together. This understanding helped to guide the agency in formulating its proposal to upgrade FMVSS No. 202 (66 FR 968). As the agency developed that proposal, we kept in mind that our eventual goal is to evaluate the performance of head restraints and seat backs as a single system to protect occupants, just as they work in the real world, instead of evaluating their performance separately as individual components.

III. Agency Rationale for Terminating Rulemaking

Although the agency has a better understanding of the issues associated with seat performance in rear impacts at various speeds, further studies are needed to allow NHTSA to develop a proposed upgrade to FMVSS No. 207 that will effectively balance seat back strength and interaction with other vehicle attributes.

In addition, it continues to be a challenge to assess the potential benefits of regulatory strategies for improving seat performance in higher speed rear impacts. Although there is anecdotal evidence of occupant injury due to poor seat performance resulting in occupant-to-occupant contact, contact with the vehicle interior, or even ejections, it remains a difficult task to assess the scope of this problem on a national level. According to the National Automotive Sampling System (NASS) Crashworthiness Data System (CDS), rear impacts represent about 8 percent of crashes severe enough to make it necessary for a vehicle to be towed from the crash scene. In comparison, frontal crashes represent 56 percent; side crashes, 26 percent; and rollover crashes, 8 percent (NASS annualized data 1992–2001). However, rear impacts cause less than two percent of moderate-to-severe injuries. Similarly, the Fatality Analysis Reporting System (FARS) shows that about 3 percent of all traffic crash fatalities involved occupants of vehicles struck in the rear (FARS annualized data 1998–2002). Thus, in comparison to other crash modes, there is considerably less data available to assess the potential benefits of upgrading FMVSS No. 207 for higher speed rear impacts. The problem associated with the relatively small number of moderate-to-severe injuries in rear impacts is compounded by the difficulty in determining the extent to which those injuries can be attributed to seat performance.

We have concluded that further study is needed to make a definitive determination of the relative merits of different potential rulemaking approaches in this area. Accordingly, we have decided that we should remove this rulemaking from the Semi-Annual Regulatory Agenda (Unified Agenda) because rulemaking action is not anticipated in the near future. However, the agency will continue to monitor issues related to rear impact protection, and specifically the performance of seats in this crash mode. Research into this area will continue as priorities allow, particularly as it relates to the goal of unifying FMVSS Nos. 202 and 207 into a single comprehensive rear impact protection standard.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: November 9, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–25425 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–59–P

[1] NHTSA Docket No. 74–13; Notice 1.

[2] Docket No. 78–07; Notice 1.

[3] Docket Management System NHTSA 1998–4064–24.

[4] Docket Management System NHTSA 1998–4064–27.

[5] Docket Management System NHTSA–1998–4064–26.

[6] Kleinberger M, Voo LM, Merkle A, Bevan M, Chang S: The Role of Seatback and Head Restraint Design Parameters on Rear Impact Occupant Dynamics. Proceedings of 18th International Technical Conference on the Enhanced Safety of Vehicles, Paper #18ESV–000229, Nagoya, Japan, May 19–22, 2003.

[7] Voo LM, Merkle A, Wright J, and Kleinberger, M: Effect of Head-Restraint Rigidity on Whiplash Injury Risk. Proceedings of 2004 SAE World Congress, Paper #2004–01–0332, Detroit, MI, March 8–11, 2004.

Proposed Rules

Federal Register
Vol. 69, No. 220
Tuesday, November 16, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 50, 52, 63, 70, 72, 73, 76, and 150

RIN 3150–AH57

Protection of Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of draft proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available draft proposed rule language for amendments to 10 CFR part 73, ''Physical Protection of Plants and Materials,'' to provide for further protection of Safeguards Information (SGI). The draft proposed rule also contains draft conforming changes to 10 CFR parts 2, 30, 40, 50, 52, 63, 70, 72, 76, and 150. The NRC is proposing to amend its regulations in part 73 for the protection of SGI to be consistent with recent Commission practices reflected in Orders and Threat Advisories issued since September 11, 2001, and to provide the flexibility afforded the Commission for the protection of such information by the Atomic Energy Act of 1954, as amended (AEA). The proposed amendments would affect licensees, information, and materials not currently specified in the regulations, but are within the scope of the AEA. The proposed amendments are intended to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. The availability of the draft rule language is intended to inform stakeholders of the current status of the NRC's activities, but the NRC is not soliciting formal public comments on the information at this time.

DATES: There will be an opportunity for public comment when the notice of proposed rulemaking is published in the **Federal Register**.

ADDRESSES: The draft rule language can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Along with any publicly available documents related to this rulemaking, the draft information may be viewed electronically on public computers in the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Room O–1 F21, and open to the public on Federal workdays from 7:45 a.m. until 4:15 p.m. The PDR reproduction contractor will make copies of documents for a fee.

FOR FURTHER INFORMATION CONTACT: Marjorie Rothschild, Division of Rulemaking & Fuel Cycle, Office of General Counsel, U.S. Nuclear Regulatory Commission, Rockville, MD 20555–001, telephone: (301) 415–1633, e-mail *mur@nrc.gov.* or Bernard Stapleton, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, telephone (301) 415–2432, e-mail *BWS2@nrc.gov.*

SUPPLEMENTARY INFORMATION: In a staff requirements memorandum of June 18, 2004, the Commission directed the Office of the General Counsel (OGC) to expedite rulemaking to develop, in consultation with the NRC staff, amendments to modify 10 CFR part 73 regarding protection of Safeguards Information. The SRM further directed that the amendments are to utilize the flexibility of section 147 of the Atomic Energy Act and are to be consistent with the practices of the Commission in various Orders and Advisories issued since September 11, 2001. The proposed amendments would affect licensees, information, and materials not currently specified in the regulations, but are within the scope of the AEA. The proposed amendments are intended to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials.

The NRC is making a preliminary version of the draft proposed rule language available to inform stakeholders of the current status of this 10 CFR part 73 proposed rulemaking. This draft rule language may be subject to significant revisions during the rulemaking process. To meet the Commission's schedule, the NRC is not soliciting early public comments on this draft rule language. No stakeholder requests for a comment period will be granted at this stage in the rulemaking process. Stakeholders will have an opportunity to comment on the rule language when it is published as a proposed rule.

The NRC's draft proposed rule, including early draft rule language, will be posted on the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* The NRC may post updates to the draft proposed rule language on the rulemaking Web site.

Dated at Rockville, Maryland, this 9th day of November, 2004.

For the Nuclear Regulatory Commission.

E. Neil Jensen,

Acting Assistant General Counsel, Division of Rulemaking & Fuel Cycle, Office of the General Counsel.

[FR Doc. 04–25359 Filed 11–15–04; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC22

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investments, Liquidity, and Divestiture

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) proposes to amend our liquidity reserve requirement for the banks of the Farm Credit System (System). The proposed rule would increase the minimum liquidity reserve requirement to 90 days. We also propose to change the eligible investment limit from 30 percent of total outstanding loans to 35 percent of total outstanding loans.

DATES: You may send your comments on or before January 3, 2005.

ADDRESSES: Comments may be sent by electronic mail to *reg-comm@fca.gov,* through the Pending Regulations section of our Web site at *http://www.fca.gov* or through the Government-wide *http://www.regulations.gov portal.* You may also send written comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean,

Virginia 22102–5090 or by fax to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; TTY (703) 883–4434; orLaura McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

1. Ensure Farm Credit banks have adequate liquidity in the case of market disruption or other extraordinary situations;

2. Improve the flexibility of Farm Credit banks to meet liquidity reserve requirements;

3. Strengthen the safety and soundness of Farm Credit banks; and,

4. Enhance the ability of the System to supply credit to agriculture and rural America in all economic conditions.

II. Background

The System is a nationwide network of borrower-owned lending cooperatives. Congress created the System as a Government-sponsored enterprise (GSE) to provide a permanent, reliable source of credit and related services to American agriculture and aquatic producers. The System meets this broad public need by financing agriculture and related businesses in rural areas. The System obtains funds to provide this financing through the issuance of Systemwide debt securities.[1] Section 1.5(15) of the Farm Credit Act of 1971, as amended, (the Act) permits Farm Credit banks to make investments as authorized by FCA.[2] We issue regulations under section 5.17(a)(9) of the Act to ensure the safe and sound operations of the System.

Our regulatory responsibilities include issuing regulations to ensure the System has adequate liquidity during market disruptions or other extraordinary situations so that it can meet the ongoing financing needs of agriculture and rural America. Under this authority, we issued § 615.5134 requiring Farm Credit banks to maintain a liquidity reserve sufficient to fund operations for approximately 15 days. We also issued § 615.5132 restricting the investment authority of Farm Credit banks to 30 percent of total outstanding loans. The liquidity reserve provision was established to protect the System against potential market disruptions, while the regulatory investment limit prevents Farm Credit banks from using their GSE status to borrow favorably from the capital markets and accumulate large investment portfolios for arbitrage activities.

The liquidity of Farm Credit banks depends largely upon access to the debt markets. Consistent market access is essential to the System's mission of providing financing to agriculture and rural America in both good and bad times. In the event that access to the debt market becomes impeded, Farm Credit banks must have sufficient liquidity to pay for maturing obligations. The importance of sufficient liquidity has become more evident in recent years. Since we established the current minimum liquidity requirement, investors, credit rating agencies, and market participants have become increasingly concerned with liquidity risk in financial institutions, including GSEs.[3] A Basel Committee report also recommends assessing market access under both normal and adverse circumstances.[4] Adverse circumstances directly affecting Farm Credit banks would include systemic events that essentially shut down the financial system, unfavorable events within the agricultural sector, or deterioration in the financial performance of an individual Farm Credit bank that triggers a condition of the Market Access Agreement.[5]

The events of September 11, 2001 led to a significant market disruption causing the normal coordination of payments and funding in the markets to break down. The massive damage to property and communications systems resulted in financial institutions collectively growing short of liquidity. The Federal Reserve supplied significant short-term liquidity to market participants, ensuring that the financial systems in the United States continued to function. As a result, the Farm Credit banks and other GSEs continued to raise funds by issuing short-term debt securities.

The events of September 11, 2001, as well as geopolitical instability, corporate scandals, problems of the telecommunications industry, and widespread credit deterioration contributed to a reduction in investors' risk tolerance. Investors were concerned that corporations were overly dependent on short-term debt. Credit rating agencies downgraded several non-financial commercial paper issues, effectively shutting many corporations out of the short-term debt market. By September 2002, the commercial paper market had shrunk by more than 50 percent. Investors also questioned liquidity risk associated with the GSEs' heavy reliance on short-term debt. Most GSEs, including the System, responded by increasing longer term debt issuances and decreasing short-term debt outstanding.

In response to market events, Farm Credit banks also entered a voluntary Common Minimum Liquidity Standard (CMLS) agreement to maintain more than the existing regulatory liquidity reserve requirement.[6] The banks agreed in the CMLS to maintain at least 90 days of liquidity. The two largest housing GSEs had previously implemented similar voluntary liquidity commitments.[7]

While the Farm Credit banks operated during the events of 2001 without accessing their liquidity reserve, we support the current industry trend of building a higher liquidity reserve to reduce potential risks from market disruptions of greater duration or magnitude. We also believe that ongoing investor concerns about the safe and sound operations of financial institutions in times of crisis must be addressed, in part, through regulatory action. If access to the debt markets is hindered or investor confidence in Systemwide debt securities erodes for any reason, the System must have adequate liquidity to sustain operations and fulfill its Congressional mandate.

For these reasons, we propose to increase the regulatory liquidity reserve requirement to 90 days. We note that the proposed change is a minimum reserve level. Farm Credit banks may need to set a higher target liquidity reserve

[1] Farm Credit banks use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) to issue and market Systemwide debt securities. The Funding Corporation is owned by the Farm Credit banks.

[2] Pub. L. 92–181, 85 Stat. 583. Section 4.2 of the Act authorizes Farm Credit banks to issue Systemwide debt securities as a means of obtaining funds for the System's operations and to invest excess funds.

[3] We last amended these regulations in 1999. *See* 64 FR 28884 (May 28, 1999).

[4] ''Sound Practices for Managing Liquidity in Banking Organizations,'' Basel Committee on Banking Supervision, *www.bis.org* (accessed June 2, 2004).

[5] *See* 2003 Amended and Restated Market Access Agreement, Articles III, IV, and V (68 FR 2037, January 15, 2003).

[6] Farm Credit System Annual Information Statement, at 49 (2003).

[7] ''Freddie Mac and Fannie Mae Announce Enhancements to Risk Management, Capital and Disclosure Practices and Standards,'' Press Release, October 19, 2000, *www.fanniemae.com* (accessed June 3, 2004).

minimum as part of their investment management policies, recognizing that in adverse situations a significantly higher liquidity reserve may be needed to protect against prolonged market disruptions.

Additionally, we propose to apply discounts on assets used to fund the liquidity reserve. Farm Credit banks may only use cash and eligible investments to fund the liquidity reserve. The discounts approximate the cost of liquidating an investment portfolio over a short period of time in adverse situations. Investments used to fund the liquidity reserve must be readily marketable. We define readily marketable assets to be investments that can be quickly converted into cash at a reasonable cost and in a timely manner.

We are also proposing two other amendments to our regulations: (1) Changing the eligible investment limit from 30 percent of total outstanding loans to 35 percent of total outstanding loans; and (2) requiring Farm Credit banks to establish and maintain a contingency plan. Under current § 615.5132, each Farm Credit bank may only hold investments equaling no more than 30 percent of the bank's total outstanding loans. This limit, when combined with a larger liquidity reserve requirement, may restrict Farm Credit banks' ability to effectively manage their balance sheet. Therefore, we propose changing the limit to 35 percent of a bank's total outstanding loans.

In order to increase liquidity, Farm Credit banks must either increase liquid investments or the duration of their debt. Increasing the liquidity reserve requirement without a corresponding change in the investment limit could reduce the banks' ability to effectively react to a variety of market conditions. For example, in a declining interest rate environment, a bank may want to shorten the duration of its liabilities to more closely match assets that may be subject to faster prepayments in a declining rate environment. However, if a bank has reached its investment limitation, the minimum liquidity reserve requirement would eventually constrain a bank's ability to shorten the duration of its debt. We believe a change in the limit of eligible investments is warranted to provide the banks with additional flexibility to successfully meet their liquidity needs and accomplish their asset/liability management strategies in all economic conditions. While making the limit less restrictive, we also note that the housing GSE regulatory agencies do not place a ceiling on total investments.[8]

We also propose to require Farm Credit banks to have a liquidity contingency plan as part of their investment policies. The proposed changes to our existing regulations are explained in more detail in the section-by-section analysis below.

III. Section-by-Section Analysis

A. Investment Purposes [§ 615.5132]

We propose amending § 615.5132 by changing the current eligible investment limit from 30 percent of total outstanding loans to 35 percent of total outstanding loans. Farm Credit banks use investments to manage short-term surplus funds, meet the minimum liquidity reserve requirement and manage interest rate risk. We believe a limit change to 35 percent of total outstanding loans would provide the banks with more flexibility to successfully meet their liquidity needs and accomplish their asset/liability management strategies. This change would allow Farm Credit banks sufficient latitude to effectively react to rapidly changing market conditions that can impact bank performance while still limiting the banks' ability to arbitrage their GSE status in the debt markets.

B. Liquidity Reserve Requirement

1. Minimum Liquidity Reserve Days [§ 615.5134(a)]

We propose amending § 615.5134(a) to establish a minimum liquidity reserve sufficient to fund 90 days of maturing obligations and other bank borrowings. We determined that the existing reserve requirement of approximately 15 days of liquidity, while adequate under normal operations and for short-term disruptions, is insufficient for prolonged market disruption. For example, during the agricultural crisis of the 1980s, the System suffered tremendous financial stress and the market required a higher rate of return for System debt. The Farm Credit banks reacted to the crisis by increasing their liquidity reserves over 220 percent between 1985 and 1986 to protect against further market disruption.[9]

We propose a mandatory minimum 90-day liquidity reserve to provide a safeguard for borrowers and investors. Under the proposed minimum, Farm Credit banks will be able to continue to fulfill their mission in a safe and sound manner, even under extreme market conditions. The proposed rule specifies that the reserve amount is based on the discounted value of the liquid assets. These discounts are discussed in section III.B.3. of this preamble.

The proposed rule would also remove the existing liquidity reserve calculation in § 615.5134(a). We believe a specific number of days is less burdensome than the procedure of calculating days and will result in greater accuracy when determining reserve levels.

2. Minimum Investment Rating [§ 615.5134(a)]

The proposed rule would require that certain investments used to fund the liquidity reserve carry one of the two highest ratings from a Nationally Recognized Statistical Rating Organization (NRSRO) in order to be counted toward the reserve requirement. Higher rated investments are generally more liquid, less volatile, and can be quickly converted into cash without significant loss. The proposed rule would also allow Farm Credit banks to include investments that are not rated in their liquidity reserves, if the investments are issued by an issuer that has one of the two highest ratings or they are guaranteed by the full faith and credit of the United States Government.

3. Discounts [§ 615.5134(c)]

The proposed rule would replace the calculations in § 615.5134(c) with discounts of assets used to fund the liquidity reserve. Each investment would be discounted to consider the cost of liquidating an investment portfolio over a short period of time in adverse situations. We believe a system of discounting assets more accurately reflects true market conditions. For example, investments that are less interest rate sensitive, such as short-term and variable rate instruments that remain below their cap, are given less of a discount because they are exposed to less price risk. The discount for long-term fixed rate instruments is higher because of greater market risk.

The proposed discounting method is calculated as follows:

Instrument	Multiply by (in percent)
Cash and overnight investments	100

[8] The Federal Housing Finance Board limits Federal Home Loan Bank (FHLB) investments in mortgage-backed securities to 300 percent of the bank's previous month-end capital and limits non-mortgage investments to 11 percent of total assets. *See* 12 CFR 966 and FHLB Financial Report (2003). The Office of Federal Housing Enterprise Oversight provides general guidance pertaining to non-mortgage investments but no limitations. *See* 12 CFR 1720.

[9] Farm Credit System Annual Information Statement, at 4 (1986).

Instrument	Multiply by (in percent)
Money market instruments & floating rate debt securities below contractual rate	95
Fixed rate debt securities	90

4. Liquidity Contingency Plan [§ 615.5134(d)]

The proposed rule would add a new § 615.5134(d) requiring each Farm Credit bank to develop a contingency plan in order to ensure the most effective use of the liquidity reserve. The proposed rule would require the plan to be annually reviewed and updated, if necessary. This requirement is similar to the requirement in § 615.5133(a) that the investment management policies be reviewed annually, making all needed changes. We expect a contingency plan to contain a strategy with clear procedures to address liquidity shortfalls in the event of market disruption. The proposed rule would allow the banks to include the contingency plan in their investment policy documents. We encourage the banks to use the Basel Committee report on managing liquidity in banking organizations as a guide when developing the contingency plan.

IV. Miscellaneous

1. Technical Changes

We propose replacing ''Farm Credit banks, bank for cooperatives, and agricultural credit banks,'' in § 615.5132 and § 615.5134 with ''Farm Credit bank'' pursuant to the definition contained in § 619.9140 of our regulations. As a conforming change, we propose removing the definition for ''Bank'' from § 615.5131(b) because it is unnecessary and redesignating the subsequent paragraphs. We also propose changing § 615.5174(a) to correct the cross-reference to § 615.5131(g) to reflect the redesignation of paragraphs.

2. Other Issues

We are seeking comments on the procedure for disposing of ineligible investments under § 615.5143. Our existing regulation requires a Farm Credit bank to divest itself of formerly eligible investments that have become ineligible. Divestiture must occur within 6 months unless we have approved a divestiture plan extending the time to divest. Prior to this rulemaking, a Farm Credit bank asked us to provide investment flexibility instead of divestiture when facing unavoidable financial loss. We are seeking comments on this matter, specifically for those situations when general economic conditions cause an investment to become ineligible or when the eligibility of an investment may be restored.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the Farm Credit banks, considered with its affiliated associations, has assets and annual income over the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart E—Investment Management

§ 615.5131 [Amended]

2. Amend § 615.5131 by:

a. Removing paragraph (b) and redesignating existing paragraphs (c) through (m) as paragraphs (b) through (l), consecutively; and

b. Removing the reference ''§ 615.5131(i)'' and adding in its place, the reference ''§ 615.5131(h)'' in paragraph (a).

3. Revise § 615.5132 to read as follows:

§ 615.5132 Investment purposes.

Each Farm Credit bank is allowed to hold eligible investments, listed under § 615.5140, in an amount not to exceed 35 percent of its total outstanding loans, to comply with the liquidity reserve requirement of § 615.5134, manage surplus short-term funds, and manage interest rate risk under § 615.5135.

4. Amend § 615.5134 by revising paragraphs (a) and (c) and by adding new paragraph (d) to read as follows:

§ 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit bank must maintain a liquidity reserve of cash and the eligible investments under § 615.5140, discounted in accordance with paragraph (c) of this section, sufficient to fund 90 days of maturing obligations and other borrowings of the bank. Money market instruments, floating, and fixed rate debt securities used to fund the liquidity reserve must be backed by the full faith and credit of the United States or rated in one of the two highest NRSRO credit categories. If not rated, the issuer's NRSRO credit rating, if one of the two highest, may be used.

* * * * *

(c) The liquid assets of the liquidity reserve are discounted as follows:

(1) Multiply cash and overnight investments by 100 percent.

(2) Multiply money market instruments and floating rate debt securities that are below the contractual cap rate by 95 percent of the market value.

(3) Multiply fixed rate debt securities by 90 percent of the market value.

(4) Multiply individual securities in diversified investment funds by the discounts that would apply to the securities if held separately.

(d) Each Farm Credit bank must have a contingency plan to address liquidity shortfalls during market disruptions. The board of directors must review the plan each year, making all needed changes. Farm Credit banks may incorporate these requirements into their § 615.5133 investment management policies.

Subpart F—Property, Transfers of Capital, and Other Investments

§ 615.5174 [Amended]

5. Amend § 615.5174 by removing the reference''§ 615.5131(g)'' and adding in its place, the reference''§ 615.5131(f)'' in paragraph (a).

Dated: November 10, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–25395 Filed 11–15–04; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 617

RIN 3052–AC24

Borrower Rights

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) proposes to allow a borrower to waive borrower rights when receiving a loan from a qualified lender as part of a loan syndication with non-System lenders that are otherwise not required by section 4.14A(a)(6) of the Farm Credit Act of 1971, as amended (Act) to provide borrower rights. This proposal would provide qualified lenders needed flexibility to meet the credit needs of borrowers seeking financing from a qualified lender as part of certain syndicated lending arrangements.

DATES: Written comments should be received on or before December 16, 2004.

ADDRESSES: Send us your comments by electronic mail to *reg-comm@fca.gov* or through the Pending Regulations section of our Web site, *http://www.fca.gov* or through the government-wide *http://www.regulations.gov* portal. You may also send written comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Mark L. Johansen, Senior Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Background

On January 17, 2003, FCA published a notice requesting comment on the regulatory treatment of loan syndications (68 FR 2540). After considering the comments, the FCA Board reaffirmed its long-standing interpretation that loan syndications come within a Farm Credit System (System) institution's direct lending authorities and, therefore, loan syndications to eligible borrowers are subject to the borrower rights requirements of the Act, and corresponding regulations. (69 FR 8407, Feb. 24, 2004)

In their comments on the notice, the Farm Credit Council (FCC) and other System institutions stated that borrower rights are an impediment to System involvement in loan syndication transactions. Loan syndications are multi-lender transactions, generally involving a lead lender and at least one other participating lender, where each lender has a direct contractual relationship with the borrower. Typically, the loan servicing and loan collection procedures are the same for each lender, and these activities are undertaken according to standard agreements among the lenders in the transaction. System institutions commented that it is difficult to enter into these transactions when they have unique disclosure requirements and have to provide distressed loan restructuring rights and the right of first refusal on repurchasing foreclosed property. The commenters stated that commercial lenders see fulfillment of these rights as a delay to loan servicing and collection and they would rather enter into loan syndication transactions with lenders that are not required to offer such rights.

The commenters also stated that borrowers in syndications are generally sophisticated in financial transactions and represented by counsel. Thus, the commenters contend that these borrowers are in an equal bargaining position with qualified lenders and should be free to choose to waive their borrower rights.

Subsequently, we received two petitions under 5 U.S.C. 553(e) asking us to amend § 617.7010(b) to allow borrowers to waive borrower rights in loan syndication transactions. These petitions cited reasons for granting a waiver similar to the previous commenters.

II. Section-by-Section Analysis

1. Waiver of Borrower Rights in Loan Syndications

After reviewing System syndication transactions, we have determined that the borrower in these transactions generally possess a very high level of business sophistication. These borrowers are more likely than others to be able to provide a knowing and intelligent waiver of their rights. Therefore, we propose to amend § 617.7010 to allow a borrower to waive borrower rights when receiving a loan from a qualified lender that is part of a loan syndication package with non-System lenders that are otherwise not required by the Act to provide borrower rights.[1] To ensure that the borrower understands the borrower rights being waived and is freely and intelligently waiving those rights, we require that the borrower be advised by legal counsel at the time of the waiver.

We also invite comments on whether we should consider other criteria to further differentiate what borrower and what type of loan syndication transactions should be eligible for a waiver of borrower rights.

The purpose of the waiver is to eliminate instances where borrower rights are an impediment to a borrower receiving credit from a qualified lender through a loan syndication with non-System lenders that are otherwise not required by the Act to provide borrower rights. As previously noted, borrower rights are not compatible with many loan syndication transactions because the servicing and collection practices must be the same for all lenders.

The waiver provision in this proposed regulation is intended to be used only in addressing the problems qualified lenders have encountered in entering into loan syndications due to the requirement to provide the borrower with borrower rights. Section 617.7010(c) provides that this waiver provision is not to be used as a means of circumventing the borrower rights requirements by creating a syndication relationship whose primary purpose is to avoid borrower rights. A syndicated lending package is typically sought when the total credit would exceed the lending institution's lending limit or the risk associated with the total credit would exceed the risk tolerance of the individual lending institution. Our examination process will be mindful of this issue and will take appropriate action to address any abuses of this proposed waiver.

III. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial

[1] Section 617.7000 defines ''qualified lender'' as: (1) A System institution, except a bank for cooperatives, that makes loans as defined in part 617; and (2) each bank, institution, corporation, company, credit union, and association described in section 1.7(b)(1)(B) of the Act (commonly referred to as an other financing institution), but only with respect to loans discounted or pledged under section 1.7(b)(1). The proposed waiver is intended to apply only to those situations where System institutions enter into loan syndications with non-System lenders that are otherwise not required by the Act (section 4.14A(a)(6)) to provide borrower rights.

number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, part 617, chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 617—BORROWER RIGHTS

1. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2243, 2252).

Subpart A—General

2. Amend § 617.7010(a) by:

a. Removing the reference, ''paragraph (b)'' and adding in its place, the reference ''paragraphs (b) and (c)'' in paragraph (a);

b. Redesignating and revising existing paragraph (c) as new paragraph (d);

c. Adding a new paragraph (c) as follows:

§ 617.7010 May borrower rights be waived?

* * * * *

(c) A borrower may waive all borrower rights provided for in part 617 of these regulations in connection with a loan syndication transaction with non-System lenders that are otherwise not required by section 4.14A(a)(6) of the Act to provide borrower rights. For purposes of this paragraph, a ''loan syndication'' is a multi-lender transaction in which each member of the lending syndicate has a direct contractual relationship with the borrower, but does not include a transaction created for the primary purpose of avoiding borrower rights.

(d) All waivers must be voluntary and in writing. The document evidencing the waiver must clearly explain the rights the borrower is being asked to waive and provide an explanation of such rights. Additionally, a borrower in a loan syndication must certify in writing that the borrower was advised by legal counsel prior to executing a waiver.

Dated: November 10, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–25397 Filed 11–15–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–155608–02]

RIN 1545–BB64

Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 403(b) of the Internal Revenue Code and under related provisions of sections 402(b), 402(g), 414(c), and 3121(a)(5)(D). The proposed regulations would provide updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). These regulations would provide the public with guidance necessary to comply with the law and will affect sponsors of section 403(b) contracts, administrators, participants and beneficiaries. In the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and IRS are issuing temporary regulations providing employment tax guidance to employers and employees on salary reduction agreements. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 14, 2005. Outlines of topics to be discussed at the public hearing scheduled for February 15, 2005, to be held in the IRS Auditorium (7th Floor) must be received by January 25, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–155608–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–155608–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–155608–02). The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, R. Lisa Mojiri-Azad or John Tolleris, (202) 622–6060; concerning the proposed regulations as applied to church-related entities, Robert Architect (202) 283–9634; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of rulemaking has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1341.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Regulations (TD 6783) under section 403(b) of the Internal Revenue Code (Code) were published in the **Federal Register** (29 FR 18356) on December 24, 1964 (1965–1 C.B. 180). These regulations provided guidance for complying with section 403(b) which had been enacted in 1958 in section 23(a) of the Technical Amendments Act of 1958, Public Law 85–866 (1958), relating to tax-sheltered annuity arrangements established for employees by public schools and tax-exempt organizations described in section 501(c)(3). Since 1964, additional regulations have been issued under section 403(b) to reflect rules relating to eligible rollover distributions and minimum distributions under section 401(a)(9).

These proposed regulations would amend the current regulations to

conform them to the numerous amendments made to section 403(b) by subsequent legislation, including section 1022(e) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829), Public Law 93–406; section 251 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 324,529), Public Law 97–248; section 1120 of the Tax Reform Act of 1986 (TRA '86) (100 Stat. 2085, 2463), Public Law 99–514; section 1450(a) of the Small Business Job Protection Act of 1996 (SBJPA) (110 Stat. 1755, 1814), Public Law 104–188; and sections 632, 646, and 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 38, 113, 126, 127), Public Law 107–16.

Explanation of Provisions

Overview

The purposes of these proposed regulations are to update the current regulations under section 403(b) to delete provisions that no longer have legal effect due to changes in law, to include in the regulations a number of items of interpretive guidance that have been issued under section 403(b) since the 1964 regulations,[1] and generally to reflect the numerous legal changes that have been made in section 403(b). A major effect of the legal changes in section 403(b) has been to diminish the extent to which the rules governing section 403(b) plans differ from the rules governing other arrangements that include salary reduction contributions, *i.e.*, section 401(k) plans and section 457(b) plans for State and local governmental entities. Thus, these regulations will reflect the increasing similarity among these arrangements.

Since the existing regulations were issued in 1964, a number of revenue rulings and other guidance under section 403(b) have become outdated as a result of changes in law. In addition, as a result of the inclusion in these proposed regulations of much of the guidance that the IRS has issued regarding section 403(b), it is anticipated that these regulations, when finalized, will supersede a number of revenue rulings and notices that have been issued under section 403(b). Thus, the IRS anticipates taking action to obsolete many revenue rulings, notices, and other guidance under section 403(b) when these regulations are issued in final form.[2] However, the positions taken in certain rulings and other outstanding guidance are expected to be retained. For example, it is intended that a revenue ruling will be issued that substantially replicates and consolidates the existing rules [3] for determining when employees are performing services for a public school.[4]

The existing regulations include special rules for determining the amount of the contributions made for an employee under a defined benefit plan, based on the employee's pension under the plan. These rules are generally no longer applicable for section 403(b) because the limitations on contributions to a section 403(b) contract are no longer coordinated with accruals under a defined benefit plan. (*See also* the discussion of defined benefit plans below under the heading *Miscellaneous Provisions*.) However, the rules for determining the amount of contributions made for an employee under a defined benefit plan in the existing regulations under section 403(b) are also used for purposes of section 402(b) (relating to nonqualified plans funded through trusts) and, accordingly, these rules are proposed to be deleted from the regulations under section 403(b). New proposed regulations under section 402(b) would authorize the Commissioner to issue guidance for determining the amount of the contributions made for an employee under a defined benefit plan under section 402(b). See also the request for comments on this guidance under the heading *Comments and Public Hearing.*

The proposed regulations also include controlled group rules under section 414(c) for entities that are tax-exempt under section 501(a).

Exclusion for Contributions to Section 403(b) Contracts

Section 403(b) provides an exclusion from gross income for certain contributions made by certain types of employers for their employees to specific types of funding arrangements. There are three categories of funding arrangements to which section 403(b) applies: (1) Annuity contracts (as defined in section 401(g)) issued by an insurance company; (2) custodial accounts that are invested solely in mutual funds; and (3) retirement income accounts which are only permitted for church employees. The exclusion applies only if certain general requirements are satisfied. For purposes of most of these requirements, section 403(b)(5) provides that all section 403(b) contracts purchased for an individual by an employer are treated as purchased under a single contract. Other aggregation rules apply for certain specific purposes, including the aggregation rules under section 402(g) for purposes of satisfying the limitations on elective deferrals (which apply both on an individual basis and to all contributions made by an employer) and the controlled group rules of section 414(b) and (c) for purposes of the general nondiscrimination rules and the contribution limitations of section 415 (which generally apply on an employer-by-employer basis).

Section 403(b) Requirements

Section 403(b)(1)(C) requires that the contract be nonforfeitable except for the failure to pay future premiums. The proposed regulations define nonforfeitability based on the regulations under section 411(a) and clarify that if an annuity contract issued by an insurance company is purchased that would satisfy section 403(b) except for the failure to satisfy this nonforfeitability requirement, then the contract is treated as a contract to which section 403(c) applies. Section 403(c) provides that the value of a nonqualified contract is included in gross income under the rules of section 83, which generally does not occur before the employee's rights in the contract become substantially vested. Under the proposed regulations, on the date on which the employee's interest in that contract becomes nonforfeitable, the

[1] Since 1964, the existing regulations have been revised for certain specific changes in law, for example, regulations under section 403(b) have been issued in question and answer form to reflect changes relating to eligible rollover distributions (TD 8619, September 15, 1995) and minimum distributions under section 401(a)(9) (TD 8987, April 16, 2002).

[2] It is expected that the following guidance is outdated, or will be superseded, when these regulations are issued in final form: Rev. Rul. 64–333. 1964–2 C.B. 114; Rev. Rul. 65–200, 1965–2 C.B. 141; Rev. Rul. 66–254, 1966–2 C.B. 125; Rev. Rul. 66–312, 1966–2 C.B. 127; Rev. Rul. 67–78, 1967–1 C.B. 94; Rev. Rul. 67–69, 1967–1 C.B. 93; Rev. Rul. 67–361, 1967–2 C.B. 153; Rev. Rul. 67–387, 1967–2 C.B. 153; Rev. Rul. 67–388, 1967–2 C.B. 153; Rev. Rul. 68–179, 1968–1 CB 179; Rev. Rul. 68–482, 1968–2 CB 186; Rev. Rul. 68–487, 1968–2 CB 187; Rev. Rul. 68–488, 1968–2 C.B. 188; Rev. Rul. 69–629, 1969–2 C.B. 101; Rev. Rul. 70–243, 1970–1 C.B. 107; Rev. Rul. 87–114, 1987–2 C.B. 116; Notice 89–23, 1989–1 C.B. 654; Rev. Rul. 90–24, 1990–1 C.B. 97; Notice 90–73, 1990–2 C.B. 353; Notice 92–36, 1992–2 C.B. 364; and Announcement 95–48, 1995–23 I.R.B. 13. It is expected that the following guidance will not be superseded when these regulations are issued in final form: Rev. Rul. 66–254, 1966–2 C.B. 125; Rev. Rul. 68–33, 1968–1 C.B. 175; Rev. Rul 68–58, 1968–1 C.B. 176; Rev. Rul. 68–116, 1968–1 C.B. 177; Rev. Rul. 68–648, 1968–2 C.B. 49; Rev. Rul. 68–488, 1968–2 C.B. 188; and Rev. Rul. 69–146, 1969–1 C.B. 132. Comments are requested on whether any guidance items under section 403(b) should be added to or deleted from either of the preceding lists. See the request for comments below under the heading *Comments and Public Hearing.*

[3] Rev. Rul. 73–607, 1973–2 C.B. 145 and Rev. Rul. 80–139, 1980–1 C.B. 88.

[4] As discussed below (under the heading *Controlled Group Rules For Tax-Exempt Entities*), other guidance that may be reissued includes the controlled group safe harbor rules in paragraph (V)(B)(2)(b) of Notice 89–23.

contract may be treated as a section 403(b) contract if the contract has at all prior times satisfied the requirements of section 403(b) other than the nonforfeitability requirement. Solely for this purpose, if a participant's interest in a contract is only partially nonforfeitable in a year, then the portion that is nonforfeitable and the portion that fails to be nonforfeitable are bifurcated.

Section 403(b)(12) requires a section 403(b) contract to make elective deferrals available to all employees (the universal availability rule) and requires other contributions to satisfy the general nondiscrimination requirements applicable to qualified plans. These rules are discussed further below under the heading *Section 403(b) Nondiscrimination and Universal Availability Rules.*

Section 403(b)(1)(E) requires a section 403(b) contract to satisfy the requirements of section 401(a)(30) relating to limitations on elective deferrals under section 402(g)(1). The proposed regulations provide that a contract only satisfies this requirement if the contract requires all elective deferrals for an employee to satisfy section 402(g)(1), including elective deferrals for the employee under the contract and any other elective deferrals under the plan under which the contract is purchased and under all other plans, contracts, or arrangements of the employer that are subject to the limits of section 402(g). This rule is the same as the rule for section 401(k) arrangements.

A section 403(b) contract is also required to provide that it will satisfy the minimum required distribution requirements of section 401(a)(9), the incidental benefit requirements of section 401(a), and the rollover distribution rules of section 402(c).

The proposed regulations address the requirement that annual additions to the contract not exceed the applicable limitations of section 415(c) (treating contributions as annual additions). In accordance with the last sentence of section 415(a)(2), if an excess annual addition is made to a contract that otherwise satisfies the requirements of section 403(b), then the portion of the contract that includes the excess will fail to be a section 403(b) contract (and instead will be a contract to which section 403(c) applies) and the remaining portion of the contract that includes the contribution that is not in excess of the section 415 limitations is a section 403(b) contract. This rule under which only the excess annual addition is subject to section 403(c) does not apply unless, for the year of the excess and each year thereafter, the issuer of the contract maintains separate accounts for the portion that includes the excess and for the section 403(b) portion, *i.e.,* the portion that includes the amount not in excess of the section 415 limitations.

The proposed regulations require that these conditions for the exclusion be satisfied both in form and operation in the section 403(b) contract. Because several of these requirements are based on plan documents—in particular the requirements that elective deferrals satisfy a universal availability rule and that other contributions satisfy the nondiscrimination rules applicable to qualified plans—the proposed regulations require that the contract be maintained pursuant to a plan. For this purpose, it is intended that the plan would include all of the material provisions regarding eligibility, benefits, applicable limitations, the contracts available under the plan, and the time and form under which benefit distributions would be made. This rule does not require that there be a single plan document. For example, this requirement would be satisfied by complying with the plan document rules applicable to qualified plans.

Interaction Between Title I of ERISA and Section 403(b) of the Code

The Treasury Department and the IRS have consulted with the Department of Labor concerning the interaction between Title I of the Employee Retirement Income Security Act of 1974 (ERISA) and section 403(b) of the Code. The Department of Labor has advised the Treasury Department and the IRS that Title I of ERISA generally applies to ''any plan, fund, or program * * * established or maintained by an employer or by an employee organization, or by both, to the extent that * * * such plan, fund, or program * * * provides retirement income to employees, or * * * results in a deferral of income by employees for periods extending to the termination of covered employment or beyond.'' ERISA, section 3(2)(A). However, governmental plans and church plans are generally excluded from coverage under Title I of ERISA. See ERISA, section 4(b)(1) and (2). Therefore, section 403(b) contracts purchased or provided under a program that is either a ''governmental plan'' under section 3(32) of ERISA or a ''church plan'' under section 3(33) of ERISA are not generally covered under Title I. However, section 403(b) of the Code is also available with respect to contracts purchased or provided by employers for employees of a section 501(c)(3) organization, and many programs for the purchase of section 403(b) contracts offered by such employers are covered under Title I of ERISA as part of an ''employee pension benefit plan'' within the meaning of section 3(2)(A) of ERISA. The Department of Labor has promulgated a regulation, 29 CFR 2510.3–2(f), describing circumstances under which an employer's program for the purchase of section 403(b) contracts for its employees, which is not otherwise excluded from coverage under Title I, will not be considered to constitute the establishment or maintenance of an ''employee pension benefit plan'' under Title I of ERISA.

These proposed regulations are generally limited to the requirements imposed under section 403(b). In this regard, the proposed regulations require that a section 403(b) program be maintained pursuant to a plan, which for this purpose is defined as a written defined contribution plan which, in both form and operation, satisfies the regulatory requirements of section 403(b) and contains all the material terms and conditions for benefits under the plan. The Department of Labor has advised the Treasury Department and the IRS that, although it does not appear that the proposed regulations would mandate the establishment or maintenance of an employee pension benefit plan in order to satisfy its requirements, it leaves open the possibility that an employer may undertake responsibilities that would constitute establishing and maintaining an ERISA-covered plan. The Department of Labor has further advised the Treasury Department and the IRS that whether the manner in which any particular employer decides to satisfy particular responsibilities under these proposed regulations will cause the employer to be considered to have established or to maintain a plan that is covered under Title I of ERISA must be analyzed on a case-by-case basis, applying the criteria set forth in 29 CFR 2510.3–2(f), including the employer's involvement as contemplated by the plan documents and in operation.

To the extent that these proposed regulations may raise questions for employers concerning the scope and application of the regulation at 29 CFR 2510.3–2(f), the Treasury Department and the IRS are requesting comments. See below under the heading *Comments and Public Hearing.*

All employee pension benefit plans covered under Title I of ERISA, including plans that involve the purchase of section 403(b) contracts, must satisfy a number of requirements, including requirements relating to

reporting and disclosure, eligibility, vesting, benefit accrual, advance notice of contribution reductions, qualified joint and survivor annuities, minimum funding, fiduciary standards, fidelity bonds, and claims procedures. Authority to interpret many of the requirements in parts 2 and 3 of Title I of ERISA (specifically those relating to eligibility, vesting, benefit accrual, minimum funding, and qualified joint and survivor annuities) has been transferred to the Treasury Department and the IRS. See Reorganization Plan No. 4 of 1978, 43 FR 47713, October 17, 1978. As a result, those section 403(b) contracts of a section 501(c)(3) organization that are part of an employee pension benefit plan are subject to requirements parallel to those imposed under sections 401(a)(11) through 401(a)(15), 410, 411, 412, and 417 of the Internal Revenue Code and the regulations promulgated thereunder, since regulations and other guidance issued under those Code sections are applicable for purposes of the parallel requirements in ERISA. Further, although specific references are made to Title I in these proposed regulations, this does not imply that other Title I issues are not applicable.

Comparison With Section 401(k) Elective Deferrals

Section 1450(a) of SBJPA provides that the rules applicable to cash or deferred elections under section 401(k) are to apply under section 403(b) for purposes of determining the frequency with which an employee may enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement. Based in part on this provision, and taking into account the guidance that has been issued since SBJPA,[5] the proposed regulations would clarify the extent to which section 403(b) elective deferrals are like elective deferrals under proposed and final rules under section 401(k). Specifically, the rules are fundamentally similar with respect to the frequency with which a deferral election can be made, changed, or revoked, including automatic enrollment (plan provisions under which elective deferrals are automatically made for employees unless they elect otherwise), the ability for a deferral election that has been made in one year to be carried forward to subsequent periods until modified, the rule under which irrevocable elections are not treated as elective deferrals, and the requirement that employees have an annual effective opportunity to make, revoke, or modify a deferral election. The rules are also fundamentally similar with respect to the compensation with respect to which the election can be made, *e.g.,* allowing a deferral election to be made for compensation up to the day before the compensation is currently available. Likewise, the proposed regulations explicitly provide that, for purposes of sections 402(g) and 403(b), an elective deferral with respect to a section 403(b) contract is limited to contributions made pursuant to a cash or deferred election, as defined in regulations under section 401(k).

These proposed regulations also include a rule comparable to the anti-conditioning rule at section 401(k)(4). Finally, the proposed regulations include rules similar to those for section 401(k) plans regarding plan limitations to comply with section 401(a)(30) and to pay out section 403(b) elective deferrals in excess of the related section 402(g) limitation.

As a result, under the proposed regulations, the three major differences between the rules applicable to section 403(b) elective deferrals and the rules applicable to elective deferrals under section 401(k) are:

- Section 403(b) is limited to certain specific employers and employees (*i.e.,* employees of a State public school, employees of a section 501(c)(3) organization, and certain ministers), whereas section 401(k) is available to all employers, except a State or local government or any political subdivision, agency, or instrumentality thereof.
- Unlike section 401(k), contributions under section 403(b) can only be made to certain funding arrangements, *i.e.,* an insurance annuity contract, custodial account that is limited to mutual fund shares, or church retirement income account, and not to a trust or custodial account that fails to satisfy the custodial account rules at section 403(b)(7) or the retirement income account rules at section 403(b)(9) for churches.
- A universal availability rule applies to section 403(b) elective deferrals, whereas an average deferral percentage rule (the ADP test) and a minimum coverage rule (section 410(b)) apply with respect to elective deferrals under section 401(k).[6]

Failure To Satisfy Section 403(b)

The regulations clarify that if the requirements of section 403(b) fail to be satisfied with respect to an employer contribution, then the contribution is subject either to the rules under section 403(c) (relating to nonqualified annuities) if the contribution is for an annuity contract issued by an insurance company, or is subject to the rules under section 61, 83, or 402(b) if the contribution is to a custodial account or retirement income account that fails to satisfy the requirements of section 403(b).

Issues have been raised about the application of section 403(b) to tax-exempt entities that have State or local government features. These proposed regulations do not attempt to address when an entity is a State (treating a local government or other subdivision as a State) and when it is a section 501(c)(3) organization that is not a State.[7] Thus, for example, these regulations do not provide guidance on the conditions under which a tax-exempt charter school is, or is not, a State entity.

Based on the wording of section 401(k)(4)(B)(i) and (ii), an entity that is both a section 501(c)(3) organization and an instrumentality of a State cannot have a section 401(k) plan. Under sections 457(b)(6) and 457(g), an entity that is both an instrumentality of a State and a section 501(c)(3) organization can have an eligible plan under section 457(b) only if it is funded. However, under section 403(b)(1)(A)(i) and (ii), an entity that is both an instrumentality of a State and a section 501(c)(3) organization could cover any of its employees, regardless of whether they are performing services for a public school.

Maximum Contribution Limitations

The exclusion provided under section 403(b) applies only to the extent that all amounts contributed by the employer for the purchase of an annuity contract for the participant do not exceed the applicable limit under section 415 and, with respect to section 403(b) elective deferrals, only if the contract is purchased under a plan that includes the limits under section 402(g), including aggregation under all plans of

[5] *See,* for example, Rev. Rul. 2000–35, 2000–2 C.B. 138, relating to automatic enrollment in section 403(b) plans.

[6] Other differences between the rules applicable to elective deferrals under section 403(b) and elective deferrals under section 401(k) include the following: the consequences of failing to satisfy the rules of section 403(b) (described below under the heading *Failure to satisfy section 403(b));* the definition of compensation (including the five-year rule) at section 403(b)(3); the special section 403(b) catch-up elective deferral at section 402(g)(7); the section 415 aggregation rules; and the general inapplicability of stock ownership for State entities (and some nonprofit entities), including the related inapplicability of employee stock ownership plans and the use of stock ownership to determine common control. An additional difference is discussed below, under the heading *Severance From Employment.*

[7] Similarly, the proposed regulations do not address the conditions under which a plan is a governmental plan under section 414(d).

the employer. The proposed regulations require a section 403(b) contract to include this limit on section 403(b) elective deferrals, as imposed by section 402(g).

Catch-Up Contributions

A section 403(b) contract may provide for additional catch-up contributions for a participant who is age 50 by the end of the year, provided that those age 50 catch-up contributions do not exceed the catch-up limit under section 414(v) for the taxable year (which is $3,000 for 2004). In addition, an employee of a qualified organization who has at least 15 years of service (disregarding any period during which an individual is not an employee of the eligible employer) is entitled to a special section 403(b) catch-up limit. Under the special section 403(b) catch-up limit, the section 402(g) limit is increased by the lowest of the following three amounts: (i) $3,000; (ii) the excess of $15,000 over the total special section 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior taxable years; or (iii) the excess of (A) $5,000 multiplied by the number of years of service of the employee with the qualified organization, over (B) the total elective deferrals made for the qualified employee by the qualified organization for prior taxable years. For this purpose, a qualified organization is an eligible employer that is a school, hospital, health and welfare service agency (including a home health service agency), or a church-related organization. In the case of a church-related organization, all entities that are in such a church-related organization are treated as a single qualified organization, so that years of service and any section 403(b) catch-up elective deferrals previously made for a qualified employee for any such church are taken into account for purposes of determining the amount of section 403(b) catch-up elective deferrals to which an employee is entitled under any section 403(b) plan maintained by another entity in the same church-related organization. A health and welfare service agency is defined as either an organization whose primary activity is to provide medical care as defined in section 213(d)(1) (such as a hospice), or a section 501(c)(3) organization whose primary activity is the prevention of cruelty to individuals or animals, or which provides substantial personal services to the needy as part of its primary activity (such as a section 501(c)(3) organization that provides meals to needy individuals).

The proposed regulations provide that any catch-up contribution for an employee who is eligible for both an age 50 catch-up and the special section 403(b) catch-up is treated first as a special section 403(b) catch-up to the extent a special section 403(b) catch-up is permitted, and then as an amount contributed as an age 50 catch-up (to the extent the age 50 catch-up amount exceeds the maximum special section 403(b) catch-up).

Any contribution made for a participant to a section 403(b) contract for a taxable year that exceeds either the section 415 maximum annual contribution limit or the section 402(g) elective deferral limit constitutes an excess contribution that is included in gross income for that taxable year (or, if later, the taxable year in which the contract becomes nonforfeitable). The proposed regulations provide that a section 403(b) contract or the section 403(b) plan may provide that any excess deferral as a result of a failure to comply with the section 402(g) elective deferral limit for the taxable year with respect to any section 403(b) elective deferral made for a participant by the employer will be distributed to the participant, with allocable net income, no later than April 15 or otherwise in accordance with section 402(g).

Determination of Years of Service Under Section 403(b)

For purposes of determining a participant's includible compensation and years of service—used both for the special section 403(b) catch-up contributions and for employer contributions for former employees—an employee's number of years of service include each full year during which the individual is a full-time employee of the eligible employer plus a fraction of a year for each part of a year during which the individual is a full-time or part-time employee of the eligible employer. A year of service is based on the employer's annual work period, not the employee's taxable year. Thus, in determining whether a university professor is employed full-time, the annual work period is the school's academic year. In determining whether an individual is employed full-time, the amount of work actually performed is compared with the amount of work that is normally required of individuals performing similar services from which substantially all of their annual compensation is derived. An individual is treated as performing a fraction of a year of service for each annual work period during which he or she is a full-time employee for part of the annual work period or for each annual work period during which he or she is a part-time employee either for the entire annual work period or for a part of the annual work period.

In measuring the amount of work of an individual performing particular services, the work performed is determined based on the individual's hours of service (as defined under section 410(a)(3)(C)), except that a plan may use a different measure of work if appropriate under the facts and circumstances. For example, a plan may provide for a university professor's work to be measured by the number of courses taught during an annual work period if that individual's work assignment is generally based on a specified number of courses to be taught.

In determining years of service, any period during which an individual is not an employee of the eligible employer is disregarded, except that, for a section 403(b) contract of an eligible employer that is a church-related organization, any period during which an individual is an employee of that eligible employer and any other eligible employer that is within the same church-related organization with that eligible employer is taken into account on an aggregated basis. In the case of a part-time employee or a full-time employee who is employed for only part of the year, the employee's most recent periods of service are aggregated to determine his or her most recent one-year period of service, as follows: the employee's service during the annual work period for which the last year of service's includible compensation is being determined is taken into account first; then the employee's service during the next preceding annual work period based on whole months is taken into account; and so forth, until the employee's service equals, in the aggregate, one year of service.

Special Rule for Former Employees

Under section 403(b)(3), a former employee is deemed to have monthly includible compensation for the period through the end of the taxable year of the employee in which he or she ceases to be an employee and through the end of each of the next five taxable years of the employee. The amount of the monthly includible compensation is equal to 1/12 of the former employee's includible compensation during the former employee's most recent year of service. Accordingly, a plan may provide that nonelective employer contributions are continued for up to five years for a former employee, up to the lesser of the dollar amount in section 415(c)(1)(A) or the former

employee's annual includible compensation based on the former employee's compensation during his or her most recent year of service.

Other Contributions for Former Employees

The proposed regulations do not address the extent, if any, to which the exclusion from gross income provided by section 403(b) applies to contributions made for former employees (*e.g.,* whether a contribution may be made for a former employee if the contribution is with respect to compensation that would otherwise be paid for a payroll period that begins after severance from employment) other than as provided under the five-year rule at section 403(b)(3), described above under the heading *Special Rule for Former Employees.* The Treasury Department and the IRS expect to issue separate guidance on this issue, potentially addressing this question with respect to not only section 403(b), but also sections 401(k), 457(b) (for eligible governmental plans), and 415(c).

Section 403(b) Nondiscrimination and Universal Availability Rules

Nondiscrimination

Section 403(b)(12)(A)(i) requires that employer contributions and employee after-tax contributions made under a section 403(b) contract satisfy a specified series of requirements (the nondiscrimination requirements) in the same manner as a qualified plan under section 401(a). These proposed regulations do not adopt the good faith reasonable standard of Notice 89–23 for purposes of satisfying the nondiscrimination requirements of section 403(b)(12)(A)(i). These nondiscrimination requirements include rules relating to nondiscrimination in contributions, benefits, and coverage (sections 401(a)(4) and 410(b)), a limitation on the amount of compensation that can be taken into account (section 401(a)(17)), and the average contribution percentage rules of section 401(m) (relating to matching and after-tax contributions). The nondiscrimination requirements are generally tested using compensation as defined in section 414(s) and are applied on an aggregated basis taking into account all plans of the employer. See the discussion below under the heading *Controlled Group Rules For Tax-Exempt Entities.*

The nondiscrimination requirements do not apply to section 403(b) elective deferrals. In addition, the only nondiscrimination requirement that applies to a governmental plan, within the meaning of section 414(d), is the limitation on compensation (section 401(a)(17)).

Universal Availability

Under section 403(b)(12)(A)(ii), a universal availability requirement applies under which all employees of the eligible employer must be permitted to elect to have section 403(b) elective deferrals contributed on their behalf if any employee of the eligible employer may elect to have the organization make section 403(b) elective deferrals. Under the proposed regulations, the universal availability requirement is not satisfied unless the contributions are made pursuant to a plan and the plan permits elective deferrals that satisfy the universal availability requirement. The proposed regulations generally provide that the universal availability requirement applies separately to each common law entity, *i.e.,* to each section 501(c)(3) organization, or, in the case of a section 403(b) plan that covers the employees of more than one State entity, to each entity that is not part of a common payroll. The proposed regulations allow an employer that historically has treated one or more of its various geographically distinct units as separate for employee benefit purposes to treat each unit as a separate organization if the unit is operated independently on a day-to-day basis.

The proposed regulations include the statutory categories that are exceptions to the universal availability rule, and provide that, if any employee listed in any excludable category has the right to have section 403(b) elective deferrals made on his or her behalf, then no employees in that category may be excluded. The categories generally are: employees who are eligible to participate in an eligible governmental plan under section 457(b) which permits contributions or deferrals at the election of the employee or a plan of the employer offering a qualified cash or deferred election under section 401(k); employees who are non-resident aliens; employees who are students performing services described in section 3121(b)(10); and employees who normally work fewer than 20 hours per week. Additionally, Notice 89–23 included transition rules for certain other exclusions that are not in the statute: employees who make a one-time election to participate in a governmental plan instead of a section 403(b) plan; employees covered by a collective bargaining agreement; visiting professors for up to one year under certain circumstances; and employees affiliated with a religious order who have taken a vow of poverty. The proposed regulations do not adopt these transition rules. See the reference to these exclusions below under the heading

Comments and Public Hearing

The nondiscrimination and the universal availability requirements do not apply to a section 403(b) contract purchased by a church, which is specially defined for this purpose, and generally does not include a university, hospital, or nursing home.

The nondiscrimination and universal availability requirements are in addition to other applicable legal requirements. Specifically, these requirements do not reflect the requirements of Title I of ERISA that may apply with respect to a section 403(b) plan, such as the ERISA vesting requirements. Another example is that, while employees who normally work fewer than 20 hours per week may be excluded under the universal availability rule, employers who maintain plans that are subject to Title I of ERISA should be aware that Title I of ERISA includes limitations on the conditions under which employees can be excluded from a plan on account of not working full time and that these limitations would generally not permit an exclusion for employees who normally work fewer than 20 hours per week. See section 202(a)(1) of ERISA and regulations under section 410(a) of the Code (which interpret section 202 of ERISA).

Timing of Distributions and Benefits

The proposed regulations reflect the statutory rules regarding when distributions can be made from a section 403(b) contract. Thus, amounts held in a custodial contract attributable to employer contributions (that are not section 403(b) elective deferrals) may not be paid to a participant before the participant has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½. This rule also applies to amounts transferred out of a custodial account (*i.e.,* to an annuity contract or retirement income account), including earnings thereon. In addition, distributions of amounts attributable to section 403(b) elective deferrals may not be paid to a participant earlier than when the participant has a severance from employment, has a hardship, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½. Hardship is generally defined under regulations issued under section 401(k).

The proposed regulations would reflect the requirements of section 402(f) relating to the written explanation

requirements for distributions that qualify as eligible rollover distributions, including conforming the timing rule to the rule for qualified plans.

Where the distribution restrictions do not apply, a section 403(b) contract is permitted to distribute retirement benefits to the participant after severance from employment or upon the prior occurrence of an event, such as after a fixed number of years, the attainment of a stated age, or disability. The proposed regulations include a number of exceptions to the timing restrictions, *e.g.*, the rule for elective deferrals does not apply to distributions of section 403(b) elective deferrals (not including earnings thereon) that were contributed before January 1, 1989.

Severance From Employment

The proposed regulations define severance from employment in a manner that is generally the same as the proposed regulations under section 401(k),[8] but provide that a severance from employment occurs on any date on which the employee ceases to be employed by an eligible employer that maintains the section 403(b) plan. Thus, a severance from employment would occur when an employee ceases to be employed by an eligible employer even though the employee may continue to be employed by an entity that is part of the same controlled group but that is not an eligible employer, or on any date on which the employee works in a capacity that is not employment with an eligible employer. Examples of the situations that constitute a severance from employment include: an employee transferring from a section 501(c)(3) organization to a for-profit subsidiary of the section 501(c)(3) organization; an employee ceasing to work for a public school, but continuing to be employed by the same State; and an individual employed as a minister for an entity that is neither a State nor a section 501(c)(3) organization ceasing to perform services as a minister, but continuing to be employed by the same entity.

Section 401(a)(9)

The proposed regulations include rules similar to those in the existing regulations relating to the minimum distribution requirements of section 401(a)(9), but with some minor changes (for example, omitting the special rules for 5-percent owners). Thus, section 403(b) contracts must satisfy the incidental benefit rules. Existing revenue rulings provide guidance with respect to the application of the incidental benefit requirements to permissible nonretirement benefits such as life, accident, or health benefits.[9]

Loans

The proposed regulations include rules reflecting that loans can be made to participants from a section 403(b) contract.

QDROs

The proposed regulations include limited rules relating to qualified domestic relations orders (QDROs) under section 414(p). Section 414(p)(9) provides that the QDRO rules only apply to plans that are subject to the anti-alienation provisions of section 401(a)(13), except that section 414(p)(9) also provides that, except to the extent set forth in regulations—there are currently no regulations under section 414(p)—the section 414(p) QDRO rules apply to a section 403(b) contract. These proposed section 403(b) regulations clarify that the section 414(p) QDRO rules apply to section 403(b) contracts for purposes of applying section 403(b).

Taxation of Distributions and Benefits From a Section 403(b) Contract

The proposed regulations include a number of rules regarding the taxation of distributions and benefits from section 403(b) contracts, including the statutory provision that only amounts actually distributed from a section 403(b) contract are generally includible in the gross income of the recipient for the year in which distributed under section 72, relating to annuities. The regulations also reflect the rule that any payment that constitutes an eligible rollover distribution is not taxed in the year distributed to the extent the payment is directly rolled over or transferred to an eligible retirement plan. The payor must withhold 20 percent Federal income tax, however, if an eligible rollover distribution is not rolled over in a direct rollover. Another provision requires the payor to give proper written notice to the section 403(b) participant or beneficiary concerning the eligible rollover distribution provision. Notice 2002–3 (2002–2 I.R.B. 289), provides a sample of the safe-harbor notice that the payor may furnish to satisfy this requirement.

Funding of Section 403(b) Arrangements

Annuity Contracts

As described above, section 403(b) only applies to contributions made to certain funding arrangements, namely: amounts held in an annuity contract, in a custodial account that is treated as an annuity contract under section 403(b)(7), or in a church retirement income account that is treated as an annuity contract under section 403(b)(9). The proposed regulations require that contributions to a section 403(b) plan be transferred to the insurance company issuing the annuity contract (or the entity holding assets of any custodial or retirement income account that is treated as an annuity contract) within a period that is not longer than is reasonable for the proper administration of the plan, such as transferring elective deferrals within 15 business days following the month in which these amounts would otherwise have been paid to the participant.

The proposed regulations provide that, except where a custodial or retirement income account is treated as an annuity contract, an annuity contract means a contract that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity, but does not include a contract that is a life insurance contract, as defined in section 7702, an endowment contract, a health or accident insurance contract, or a property, casualty, or liability insurance contract. The regulations include a special transition rule relating to life insurance contracts issued before the effective date.

Rev. Rul. 67–361 (1967–2 C.B. 153), and Rev. Rul. 67–387 (1967–2 C.B. 153), provided for certain State plans to be treated as qualifying as annuities under section 403(b). Rev. Rul. 82–102 (1982–1 C.B. 62), revoked this interpretation (in connection with the 1974 enactment of section 403(b)(7) which allowed custodial accounts), but provides section 7805(b) relief for arrangements established in reliance on these rulings, *i.e.*, for arrangements established on or before May 17, 1982. The proposed regulations contemplate that the section 7805(b) relief provided by these rulings would be continued. This relief would be limited to State section 403(b) plans established on or before May 17, 1982 satisfying either of the following requirements: (i) benefits under the contract are provided from a separately funded retirement reserve that is subject to supervision of the State insurance department or (ii) benefits under the contract are provided from a fund that is separate from the fund used to

[8] *See* proposed § 1.401(k)–1(d)(2), REG–108639–99, 68 FR 42476 (July 17, 2003).

[9] *See,* for example, Rev. Rul. 61–121, 1961–2 C.B. 65; Rev. Rul. 68–304, 1968–1 C.B. 179; Rev. Rul. 72–240, 1972–1 C.B. 108; Rev. Rul. 72–241, 1972–1 C.B. Rev. Rul. 73–239, 1973–1 C.B. 201; and Rev. Rul. 74– 115, 1974–1 C.B. 100. (see § 601(d)(2)(ii)(*b*) of this chapter).

provide statutory benefits payable under a State retirement system and that is part of a State teachers retirement system to purchase benefits that are unrelated to the basic benefits provided under the retirement system, and the death benefit provided under the contract cannot at any time exceed the larger of the reserve or the contribution made for the employee.

Custodial Accounts

The proposed regulations define a custodial account as a plan, or a separate account under a plan, in which an amount attributable to section 403(b) contributions (or amounts rolled over to a section 403(b) contract) is held by a bank or a person who satisfies the conditions in section 401(f)(2), if amounts held in the account are invested in stock of a regulated investment company (as defined in section 851(a) relating to mutual funds), the special restrictions on distributions with respect to a custodial account are satisfied, the assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries, and the account is not part of a retirement income account, as described below. This requirement limiting investments to mutual funds is not satisfied if the account includes any assets other than stock of a regulated investment company.

Special Rules for Church Plans

Retirement Income Accounts

The proposed regulations include a number of special rules for church plans. Under section 403(b)(9), a retirement income account for employees of a church-related organization is treated as an annuity contract for purposes of section 403(b) and these regulations. Under the proposed regulations, the rules for a retirement income account are based largely on the legislative history to TEFRA. The proposed regulations define a retirement income account as a defined contribution program established or maintained by a church-related organization under which (i) there is separate accounting for the retirement income account's interest in the underlying assets (*i.e.*, it must be possible at all times to determine the retirement income account's interest in the underlying assets and distinguish that interest from any interest that is not part of the retirement income account), (ii) investment performance is based on gains and losses on those assets, and (iii) the assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries. For this purpose, assets are treated as diverted to the employer if the employer borrows assets from the account. A retirement income account must be maintained pursuant to a program which is a plan and the plan document must state (or otherwise evidence in a similarly clear manner) the intent to constitute a retirement income account.

If any asset of a retirement income account is owned or used by a participant or beneficiary, then that ownership or use is treated as a distribution to that participant or beneficiary. The proposed regulations provide that a retirement income account that is treated as an annuity contract is not a custodial account (even if it is invested in stock of a regulated investment company).

A life annuity can generally only be provided from an individual account by the purchase of an insurance annuity contract. However, in light of the special rules applicable to church retirement income accounts, the proposed regulations permit a life annuity to be paid from such an account if certain conditions are satisfied. The conditions are that the amount of the distribution form have an actuarial present value, at the annuity starting date, that is equal to the participant's or beneficiary's accumulated benefit, based on reasonable actuarial assumptions, including assumptions regarding interest and mortality, and that the plan sponsor guarantee benefits in the event that a payment is due that exceeds the participant's or beneficiary's accumulated benefit.

Commingling Assets

Under these proposed regulations, both custodial accounts and retirement income accounts would be subject to an exclusive benefit requirement similar to the exclusive benefit requirement applicable to qualified plans. Section 403(b)(7)(B) provides for a custodial account to be treated as a tax exempt.

When these regulations are issued as final regulations, to the extent permitted by the Commissioner in future guidance, assets held under a custodial account or a retirement income account may be pooled with trust assets held under qualified plans.

Controlled Group Rules for Tax-Exempt Entities

The proposed regulations include controlled group rules under section 414(c) for entities that are tax-exempt under section 501(a). Under these rules, the employer for a plan maintained by a section 501(c)(3) organization (or any other tax-exempt organization under section 501(a)) includes not only the organization whose employees participate in the plan, but also any other exempt organization that is under common control with such organization, based on 80 percent of the directors or trustees being either representatives of or directly or indirectly controlled by an exempt organization. The proposed regulations include an anti-abuse rule and would also allow tax exempt organizations to choose to be aggregated if they maintain a single plan covering one or more employees from each organization and the organizations regularly coordinate their day to day exempt activities. For a section 501(c)(3) organization that makes contributions to a section 403(b) contract, these rules would be generally relevant for purposes of the nondiscrimination requirements, as well as the section 415 contribution limitations, the special section 403(b) catch-up contributions, and the section 401(a)(9) minimum distribution rules.

These controlled group rules for tax-exempt entities generally do not apply to certain church entities. Comments are requested below under the heading *Comment and Public Hearing* on whether these rules should be extended to such church entities.

The proposed regulations do not include controlled group rules for public schools. As noted above (under the heading *Overview*), it is anticipated that, when these regulations are issued as final regulations, guidance may be issued providing controlled group safe harbors for public schools taking into account the existing safe harbors in Notice 89–23.

Miscellaneous Provisions

The proposed regulations include a number of rules that address the circumstances under which a section 403(b) plan may be terminated or assets may be exchanged or transferred.

Plan Termination

The proposed regulations, if adopted as final regulations, would not only permit an employer to amend its section 403(b) plan to eliminate future contributions for existing participants, but would allow plan provisions that permit plan termination with a resulting distribution of accumulated benefits. In general, the distribution of accumulated benefits would be permitted only if the employer (taking into account all entities that are treated as the employer under section 414 on the date of the termination) does not make contributions to another section 403(b)

contract that is not part of the plan (based generally on contributions made to a section 403(b) contract during the 12 months before and after the date of plan termination). In order for a section 403(b) plan to be considered terminated, all accumulated benefits under the plan must be distributed to all participants and beneficiaries as soon as administratively practicable after termination of the plan. A distribution includes delivery of a fully paid individual insurance annuity contract. Eligible rollover distributions would not be subject to current income inclusion if rolled over to an eligible retirement plan.

The proposed regulations prohibit an employer that ceases to be an eligible employer from making any further contributions to the section 403(b) contract for subsequent periods. In this event, the contract can be held under a frozen plan or the plan could be terminated in accordance with the rules regarding plan termination.

Exchanges and Transfers

Under certain conditions, the proposed regulations permit the following exchanges or transfers:

- A section 403(b) contract is permitted to be exchanged for another section 403(b) contract held under the same section 403(b) plan if the following conditions are satisfied: (1) The plan provides for the exchange, (2) the participant or beneficiary has an accumulated benefit immediately after the exchange at least equal to the accumulated benefit of that participant or beneficiary immediately before the exchange (taking into account the accumulated benefit of that participant or beneficiary under both section 403(b) contracts immediately before the exchange), and (3) the contract received in the exchange provides that, to the extent a contract that is exchanged is subject to any section 403(b) distribution restrictions, the contract received in the exchange imposes restrictions on distributions to the participant or beneficiary that are not less stringent than those imposed on the contract being exchanged.
- A section 403(b) contract is permitted to be transferred to another section 403(b) plan (*i.e.*, the section 403(b) contracts held thereunder, including any assets held in a custodial account or retirement income account that are treated as section 403(b) contracts) if the following conditions are satisfied: (1) The participant or beneficiary whose assets are being transferred is an employee of the employer providing the receiving plan, (2) the transferor plan provides for transfers, (3) the receiving plan provides for the receipt of transfers, (4) the participant or beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that participant or beneficiary immediately before the transfer, and (5) the receiving plan provides that, to the extent any amount transferred is subject to any section 403(b) distribution restrictions, the receiving plan imposes restrictions on distributions to the participant or beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan. In addition, if a plan-to-plan transfer does not constitute a complete transfer of the participant's or beneficiary's interest in the section 403(b) plan, then the transferee plan must treat the amount transferred as a continuation of a pro rata portion of the participant's or beneficiary's interest in the transferor section 403(b) plan (*e.g.*, a pro rata portion of the participant's or beneficiary's interest in any after-tax employee contributions).
- A section 403(b) plan may provide for the transfer of its assets to a qualified plan under section 401(a) to purchase permissive service credit under a defined benefit governmental plan or to make a repayment to a defined benefit governmental plan.

However, neither a qualified plan nor an eligible plan under section 457 may transfer assets to a section 403(b) plan, and a section 403(b) plan may not accept such a transfer. In addition, a section 403(b) contract may not be exchanged for an annuity contract that is not a section 403(b) contract. Neither a plan-to-plan transfer nor a contract exchange permitted under the proposed regulations is treated as a distribution for purposes of the section 403(b) distribution restrictions (so that such a transfer or exchange may be made before severance from employment or another distribution event).

Additional plan-to-plan transfer rules may apply in the event that a plan-to-plan transfer is made to or from a section 403(b) arrangement that is subject to Title I of ERISA. See section 208 of ERISA and regulations under section 414(l) of the Internal Revenue Code (which are the regulations interpreting section 208 of ERISA).

Defined Benefit Plans

These proposed regulations generally require a section 403(b) plan to be a defined contribution plan. This requirement would not apply to certain church plans. Specifically, section 251(e)(5) of TEFRA permits a church arrangement in effect on September 3, 1982 (the date TEFRA was enacted) to not be treated as failing to satisfy the exclusion allowance limitations of section 403(b)(2) merely because it is a defined benefit plan and these regulations would allow such a plan to be continued. Any other defined benefit plan in existence on the effective date of these regulations that has taken the position, based on a reasonable interpretation of the statute, that it satisfies section 403(b) would not be subject to the requirement in these regulations that the plan be a defined contribution plan for pre-effective date accruals, and such a plan might seek to take the position that it satisfies the section 401 qualified plan rules for subsequent accruals (assuming it satisfies those rules with respect to those accruals).

Section 3121(a)(5)(D)

These proposed regulations also include proposed amendments to regulations under section 3121(a)(5)(D), defining salary reduction agreement for purposes of the Federal Insurance Contributions Act (FICA). The text of the proposed amendments is the same as that of temporary regulations being issued under section 3121(a)(5)(D) in this same issue of the **Federal Register**. The proposed regulations under section 3121(a)(5)(D) would be applicable on November 16, 2004.

Proposed Effective Date

These regulations (other than the proposed amendments to regulations under section 3121(a)(5)(D)) are proposed to be generally applicable for taxable years beginning after December 31, 2005. However, there are certain transition rules. Under one transition rule, for a section 403(b) contract maintained pursuant to a collective bargaining agreement that is ratified and in effect when the final regulations are issued, the regulations would not apply until the collective bargaining agreement terminates (determined without regard to any extension thereof after the date of publication of final regulations). Under another transition rule, for a section 403(b) contract maintained by a church-related organization for which the authority to amend the contract is held by a church convention (within the meaning of section 414(e)), the regulations would not apply before the earlier of (i) January 1, 2007 or (ii) 60 days following the earliest church convention that occurs after the date of publication of final regulations. These proposed regulations cannot be relied upon until adopted in final form.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the determination that respondents will need to spend minimal time (an average of ½ hour per year) giving the statutorily required notice to departing employees. Therefore, a Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, comments are specifically requested on the clarity of the proposed regulations and how they can be revised to be more easily understood. All comments will be available for public inspection and copying.

Comments are also requested on the following:

- As indicated above, the IRS expects to obsolete a number of revenue rulings, notices, and other guidance when these regulations are issued in final form, including guidance that is now outdated as a result of changes in the law, and guidance that will become outdated by final regulations. Other previously issued guidance is expected to continue in effect. Comments are requested as to whether any previously issued guidance should be added or deleted from either list, with respect to the scope of this obsolescence, and also with respect to whether there are any aspects that should to be preserved in the guidance that is expected to be obsolete.
- The Treasury Department and the IRS are requesting comments describing the issues and suggesting methods of clarifying the interaction between the employer activities required under these proposed regulations for an arrangement to satisfy section 403(b) and the employer conduct that will give rise to the establishment and maintenance of an employee pension benefit plan covered under Title I of ERISA. The Treasury Department and the IRS will forward a copy of the comments on this issue to the Department of Labor.
- These proposed regulations authorize the Commissioner to issue rules to determine the amount of contributions for a participant in a defined benefit plan under section 402(b) (relating to the tax treatment of contributions to nonqualified plans). Comments are requested on the methodology and assumptions that should be used for this purpose, including specifically whether the methodology and assumptions should be the same as those currently in the regulations under section 403(b), whether revisions should be made to reflect the possibility that a nonqualified plan might include an early retirement subsidy, and whether the assumptions currently applicable under the section 403(b) regulations should be updated (for example, to match the assumptions in Rev. Proc. 2004–37 (2004–2 I.R.B. 26), relating to determining the extent to which certain pension payments made to a nonresident alien are not U.S. source income).
- With respect to includible compensation, comments are requested on whether the Treasury Department and IRS have the authority to permit 403(b) plans to use compensation, as defined in section 415(c)(3) without regard to section 415(c)(3)(E), in lieu of the definition of includible compensation under section 403(b)(3) and, if so, whether this should be done.
- With respect to the universal availability rule, comments are requested on whether the requirement should apply separately to employees covered by a collective bargaining unit. Comments are also requested on whether plans that exclude any of the following additional types of employees (as has been permitted under Notice 89–23) should be permitted to continue to exclude these types of employees for at least some period of time: employees who make a one-time election to participate in a governmental plan described in section 414(d) instead of a section 403(b) plan; professors who are providing services on a temporary basis to another public school for up to one year and for whom section 403(b) contributions are being made at a rate no greater than the rate each such professor would receive under the section 403(b) plan of the original public school; employees who are affiliated with a religious order and who have taken a vow of poverty where the religious order provides for the support of such employees in their retirement; and employees who are covered by a collective bargaining agreement.
- The controlled group rules in these proposed regulations for tax-exempt entities generally do not apply to certain church entities. Comments are requested on whether these rules should be extended to such church entities.

A public hearing has been scheduled for February 15, 2005, at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area at the Constitution Avenue entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by January 25, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are R. Lisa Mojiri-Azad and John Tolleris, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement,

Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.403(b)–3 and adding entries in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.403(b)–6 Also issued under 26 U.S.C. 403(b)(10). * * *

§ 1.414(c)–5 Also issued under 26 U.S.C. 414(b), (c), and (o). * * *

Par. 2. Section 1.402(b)–1 is amended by revising paragraphs (a)(2) and (b)(2)(ii) to read as follows:

§ 1.402(b)–1 Treatment of beneficiary of a trust not exempt under section 501(a).

(a) * * *

(2) *Determination of amount of employer contributions.* If, for an employee, the actual amount of employer contributions referred to in paragraph (a)(1) of this section for any taxable year of the employee is not determinable or for any other reason is not known, such amount shall be the amount applicable under rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(b) * * *

(2) * * *

(ii) If a separate account in a trust for the benefit of two or more employees is not maintained for each employee, the value of the employee's interest in such trust is determined in accordance with rules prescribed by the Commissioner under the authority in paragraph (a)(2) of this section.

* * * * *

Par. 3. Section 1.402(g)(3)–1 is added to read as follows:

§ 1.402(g)(3)–1 Employer contributions to purchase a section 403(b) contract under a salary reduction agreement.

(a) *General rule.* With respect to an annuity contract under section 403(b), except as provided in paragraph (b) of this section, an elective deferral means an employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement within the meaning of § 31.3121(a)(5)–2(a) of this chapter.

(b) *Special rule.* Notwithstanding paragraph (a) of this section, for purposes of section 402(g)(3)(C), an elective deferral only includes a contribution that is made pursuant to a cash or deferred election (as defined at § 1.401(k)–1(a)(3)). Thus, for purposes of section 402(g)(3)(C), an elective deferral does not include a contribution that is made pursuant to an employee's one-time irrevocable election made on or before the employee's first becoming eligible to participate under the employer's plan or a contribution made as a condition of employment that reduces the employee's compensation.

(c) *Effective date.* This section is applicable for taxable years beginning after December 31, 2005.

Par. 4. Section 1.403(b)–0 is added to read as follows:

§ 1.403(b)–0 Taxability under an annuity purchased by a section 501(c)(3) organization or a public school.

§ 1.403(b)–1 General overview of taxability under an annuity contract purchased by a section 501(c)(3) organization or a public school.

§ 1.403(b)–2 Definitions.

§ 1.403(b)–3 Exclusion for contributions to purchase section 403(b) contracts.

§ 1.403(b)–4 Contribution limitations.

§ 1.403(b)–5 Nondiscrimination rules.

§ 1.403(b)–6 Timing of distributions and benefits.

§ 1. 403(b)–7 Taxation of distributions and benefits.

§ 1.403(b)–8 Funding.

§ 1.403(b)–9 Special rules for church plans.

§ 1.403(b)–10 Miscellaneous provisions.

§ 1.403(b)–11 Effective date.

Par. 5. Sections 1.403(b)–1, 1.403(b)–2 and 1.403(b)–3 are revised to read as follows:

§ 1.403(b)–1 General overview of taxability under an annuity contract purchased by a section 501(c)(3) organization or a public school.

Section 403(b) and §§ 1.403(b)–2 through 1.403(b)–10 provide rules for the Federal income tax treatment of an annuity purchased for an employee by an employer that is either a tax-exempt entity under section 501(c)(3) (relating to certain religious, charitable, scientific, or other types of organizations) or a public school, or for a minister described in section 414(e)(5)(A). See section 403(a) (relating to qualified annuities) for rules regarding the taxation of an annuity purchased under a qualified annuity plan that meets the requirements of section 404(a)(2), and see section 403(c) (relating to nonqualified annuities) for rules regarding the taxation of other types of annuities.

§ 1.403(b)–2 Definitions.

(a) This section sets forth the definitions that are applicable for purposes of §§ 1.403(b)–1 through 1.403(b)–11.

(1) *Accumulated benefit* means the total benefit to which a participant or beneficiary is entitled under a section 403(b) contract, including all contributions made to the contract and all earnings thereon.

(2) *Annuity contract* means a contract that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity. See § 1.401(f)–1(d)(2) and (e) for the definition of an annuity, and see § 1.403(b)–8(c)(3) for a special rule for certain State plans. See also §§ 1.403(b)–8(d) and 1.403(b)–9(a) for additional rules regarding the treatment of custodial accounts and retirement income accounts as annuity contracts.

(3) *Beneficiary* means a person who is entitled to benefits in respect of a participant following the participant's death or an alternate payee pursuant to a qualified domestic relations order, as described in § 1.403(b)–10(c).

(4) *Catch-up* amount or *catch-up* limitation for a participant for a taxable year means a section 403(b) elective deferral permitted under section 414(v) (as described in § 1.403(b)–4(c)(2)), or section 402(g)(7) (as described in § 1.403(b)–4(c)(3)).

(5) *Church* means a church as defined in section 3121(w)(3)(A) and a qualified church-controlled organization as defined in section 3121(w)(3)(B).

(6) *Church-related organization* means a church or convention or association of churches as described in section 414(e)(3)(A).

(7) *Elective deferral* means an elective deferral under § 1.402(g)(3)–1 (with respect to an employer contribution to a section 403(b) contract) and any other amount that constitutes an elective deferral under section 402(g)(3).

(8)(i) *Eligible employer* means—

(A) A State, but only with respect to an employee of the State performing services for a public school;

(B) A section 501(c)(3) organization with respect to any employee of the section 501(c)(3) organization;

(C) Any employer of a minister described in section 414(e)(5)(A), but only with respect to the minister; or

(D) A minister described in section 414(e)(5)(A), but only with respect to a retirement income account established for the minister.

(ii) An entity is not an eligible employer under paragraph (a)(8)(i)(A) of this section if it treats itself as not being a State for any other purpose of the Internal Revenue Code, and a subsidiary or other affiliate of an eligible employer is not an eligible employer under paragraph (a)(8)(i) of this section if the subsidiary or other affiliate is not an entity described in paragraph (a)(8)(i) of this section.

(9) *Employee* means a common-law employee performing services for the employer, and does not include a former employee or an independent contractor. Subject to any rules in §§ 1.403(b)–1 through 1.403(b)–11 that are specifically applicable to ministers, an employee also includes a minister described in section 414(e)(5)(A) when performing services in the exercise of his or her ministry.

(10) *Employee performing services for a public school* means an employee performing services as an employee for a public school of a State. This definition is not applicable unless the employee's compensation for performing services for a public school is paid by the State. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. The term *public office* includes any elective or appointive office of a State.

(11) *Includible compensation* means the employee's compensation received from an eligible employer that is includible in the participant's gross income for Federal income tax purposes (computed without regard to section 911) for the most recent period that is a year of service. Includible compensation for a minister who is self-employed means the minister's earned income as defined in section 401(c)(2) (computed without regard to section 911) for the most recent period that is a year of service. Includible compensation does not include any compensation received during a period when the employer is not an eligible employer. Includible compensation also includes any elective deferral and any amount contributed or deferred by the eligible employer at the election of the employee that is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457. The amount of includible compensation is determined without regard to any community property laws. See § 1.403(b)–4(d) for a special rule regarding former employees.

(12) *Participant* means an employee for whom a section 403(b) contract is currently being purchased, or an employee or former employee for whom a section 403(b) contract has previously been purchased and who has not received a distribution of his or her entire benefit under the contract.

(13) *Plan* means a plan as described in § 1.403(b)–3(b)(3).

(14) *Public school* means a State-sponsored educational organization described in section 170(b)(1)(A)(ii) (relating to educational organizations that normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where educational activities are regularly carried on).

(15) *Retirement income account* means a defined contribution program established or maintained by a church-related organization to provide benefits under section 403(b) for its employees or their beneficiaries as described in § 1.403(b)–9.

(16) *Section 403(b) contract; section 403(b) plan*—(i) *Section 403(b) contract* means a contract described in § 1.403(b)–3. If for any taxable year an employer contributes to more than one section 403(b) contract for a participant or beneficiary, then, under section 403(b)(5), all such contracts are treated as one contract for purposes of section 403(b) and §§ 1.403(b)–2 through 1.403(b)–10. See also § 1.403(b)–3(b)(1).

(ii) *Section 403(b) plan* means the plan of the employer under which the section 403(b) contracts for its employees are maintained.

(17) *Section 403(b) elective deferral* means an elective deferral that is an employer contribution to a section 403(b) contract for an employee. See § 1.403(b)–5(b) for additional rules with respect to a section 403(b) elective deferral.

(18) *Section 501(c)(3) organization* means an organization that is described in section 501(c)(3) (relating to certain religious, charitable, scientific, or other types of organizations) and exempt from tax under section 501(a).

(19) *Severance from employment* means that the employee ceases to be employed by the employer maintaining the plan. See regulations under section 401(k) for additional guidance concerning severance from employment. See also § 1.403(b)–6(h) for a special rule under which severance from employment is determined by reference to employment with the eligible employer.

(20) *State* means a State, a political subdivision of a State, or any agency or instrumentality of a State. For this purpose, the District of Columbia is treated as a State, as provided under section 7701(a)(10). In addition, for purposes of determining whether an individual is an employee performing services for a public school, an Indian tribal government is treated as a State, as provided under section 7871(a)(6)(B). See also section 1450(b) of the Small Business Job Protection Act of 1996 (110 Stat. 1755, 1814) for special rules treating certain contracts purchased in a plan year beginning before January 1, 1995, that include contributions by an Indian tribal government as section 403(b) contracts, whether or not those contributions are for employees performing services for a public school.

(21) *Years of service* means each full year during which an individual is a full-time employee of an eligible employer, plus fractional credit for each part of a year during which the individual is either a full-time employee of an eligible employer for a part of the year or a part-time employee of an eligible employer. See § 1.403(b)–4(e) for rules for determining years of service.

(b) [Reserved].

§ 1.403(b)–3 Exclusion for contributions to purchase section 403(b) contracts.

(a) *Exclusion for section 403(b) contracts.* Amounts contributed by an eligible employer for the purchase of an annuity contract for an employee are excluded from the gross income of the employee under section 403(b) only if each of the requirements in paragraphs (a)(1) through (9) of this section is satisfied. In addition, amounts contributed by an eligible employer for the purchase of an annuity contract for an employee pursuant to a cash or deferred election are not includible in an employee's gross income at the time the cash would have been includible in the employee's gross income (but for the cash or deferred election) if each of the requirements in paragraphs (a)(1) through (9) of this section is satisfied.

(1) *Not a contract issued under qualified plan or eligible governmental plan.* The contract is not purchased under a qualified plan (under section 401(a) or 404(a)(2)) or an eligible governmental plan under section 457(b).

(2) *Nonforfeitability.* The rights of the employee under the contract (disregarding rights to future premiums) are nonforfeitable. An employee's rights under a contract fail to be nonforfeitable unless the participant for whom the contract is purchased has at all times a fully vested and nonforfeitable right (as defined under § 1.411(a)–4) to all benefits provided under the contract. See paragraph (c) of this section for

additional rules regarding the nonforfeitability requirement of this paragraph (a)(2).

(3) *Nondiscrimination and universal availability.* In the case of a contract purchased by an eligible employer other than a church, the contract is purchased under a plan that satisfies section 403(b)(12) (relating to nondiscrimination and universal availability requirements). See § 1.403(b)–5.

(4) *Limitations on elective deferrals.* In the case of an elective deferral, the contract satisfies section 401(a)(30) (relating to limitations on elective deferrals). A contract does not satisfy section 401(a)(30) as required under this paragraph (a)(4) unless the contract requires all elective deferrals for an employee to not exceed the limits of section 402(g)(1), including elective deferrals for the employee under the contract and any other elective deferrals under the plan under which the contract is purchased and under all other plans, contracts, or arrangements of the employer.

(5) *Nontransferability.* The contract is not transferable. This paragraph (a)(5) does not apply to a contract issued before January 1, 1963. See section 401(g).

(6) *Minimum required distributions.* The contract satisfies the requirements of section 401(a)(9) (relating to minimum required distributions). See § 1.403(b)–6(e).

(7) *Rollover distributions.* The contract provides that, if the distributee of an eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan, as defined in section 402(c)(8)(B), and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. See § 1.403(b)–7(b)(2).

(8) *Limitation on incidental benefits.* The contract satisfies the incidental benefit requirements of section 401(a). See § 1.403(b)–6(g).

(9) *Maximum annual additions.* The annual additions to the contract do not exceed the applicable limitations of section 415(c) (treating contributions and other additions as annual additions). See paragraph (b) of this section and § 1.403(b)–4(b).

(b) *Application of requirements*—(1) *Aggregation of contracts.* In accordance with section 403(b)(5), for purposes of determining whether this section is satisfied, all section 403(b) contracts purchased for an individual by an employer are treated as purchased under a single contract. Additional aggregation rules apply under section 402(g) for purposes of satisfying paragraph (a)(4) of this section and under section 415 for purposes of satisfying paragraph (a)(9) of this section.

(2) *Disaggregation for excess annual additions.* In accordance with the last sentence of section 415(a)(2), if an excess annual addition is made to a contract that otherwise satisfies the requirements of this section, then the portion of the contract that includes such excess annual addition fails to be a section 403(b) contract (and instead is a contract to which section 403(c) applies, as further described in paragraph (c)(1) of this section) and the remaining portion of the contract is a section 403(b) contract. This paragraph (b)(2) does not apply unless, for the year of the excess and each year thereafter, the issuer of the contract maintains separate accounts for each such portion. Thus, the entire contract fails to be a section 403(b) contract if an excess annual addition is made and a separate account is not maintained with respect to the excess.

(3) *Plan in form and operation.* A contract does not satisfy paragraph (a) of this section unless it is maintained pursuant to a plan. For this purpose, a plan is a written defined contribution plan, which, in both form and operation, satisfies the requirements of this section and §§ 1.403(b)–4 through 1.403(b)–10. For purposes of this section and §§ 1.403(b)–4 through 1.403(b)–10, the plan must contain all the material terms and conditions for eligibility, benefits, applicable limitations, the contracts available under the plan, and the time and form under which benefit distributions would be made. For purposes of this section and §§ 1.403(b)–4 through 1.403(b)–10, a plan may contain certain optional features not required under section 403(b), such as hardship withdrawal distributions, loans, plan-to-plan or annuity contract-to-annuity contract transfers, and acceptance of rollovers to the plan. However, if a plan contains any optional provisions, the optional provisions must meet, in both form and operation, the relevant requirements under section 403(b), this section, and §§ 1.403(b)–4 through 1.403(b)–10. This paragraph (b)(3) applies to contributions to an annuity contract by a church only if the annuity is part of a retirement income account, as defined in § 1.403(b)–9.

(4) *Exclusion limited to former employees*—(i) *General rule.* Except as provided in paragraph (b)(4)(ii) of this section and in § 1.403(b)–4(d), the exclusion from gross income provided by section 403(b) does not apply to contributions made for former employees. For this purpose, a contribution is not made for a former employee if the contribution is with respect to compensation that would otherwise be paid for a payroll period that begins before severance from employment.

(ii) *Exceptions.* [Reserved].

(c) *Effect of failure*—(1) *General rule.* See section 403(c) (relating to nonqualified annuities) for the treatment of a nonqualified annuity contract issued by an insurance company that is not a section 403(b) contract. See section 61, 83, or 402(b) for the treatment of a custodial account or retirement income account that fails to be treated as a section 403(b) contract.

(2) *Failure to satisfy nonforfeitability requirement.* If an annuity contract issued by an insurance company would qualify as a section 403(b) contract but for the failure to satisfy the nonforfeitability requirement of paragraph (a)(2) of this section, then the contract is treated as a contract to which section 403(c) applies. However, on or after the date on which the participant's interest in that contract becomes nonforfeitable, the contract may be treated as a section 403(b) contract if no election has been made under section 83(b) with respect to the contract, the participant's interest in the contract has been subject to a substantial risk of forfeiture before becoming nonforfeitable, and the contract has at all times satisfied the requirements of paragraph (a) of this section other than the nonforfeitability requirement of paragraph (a)(2) of this section. Thus, for example, for the current year and each prior year, no contribution can have been made to the contract that would cause the contract to fail to be a section 403(b) contract as a result of contributions exceeding the limitations of section 415 (except to the extent permitted under paragraph (b)(2) of this section) or to fail to satisfy the nondiscrimination rules described in § 1.403(b)–5.

(3) *Treatment of partial vesting and separate accounts.* For purposes of applying this paragraph (c), if a participant's interest in a contract becomes nonforfeitable to any extent in a year but the participant's entire interest in the contract is not nonforfeitable, then the portion that is nonforfeitable and the portion that fails to be nonforfeitable are each treated as separate contracts. In addition, for purposes of applying this paragraph (c), if a contribution is made to an annuity contract in excess of the limitations of section 415(c) and the excess is maintained in a separate account, then

the portion of the contract that includes the excess contributions account and the remainder are each treated as separate contracts. Thus, if an annuity contract that includes an excess contributions account changes from forfeitable to nonforfeitable during a year, then the portion that is not attributable to the excess contributions account constitutes a section 403(b) contract (assuming it otherwise satisfies the requirements to be a section 403(b) contract) and is not included in gross income, and the portion that is attributable to the excess contributions account is included in gross income in accordance with section 403(c).

Par. 5a. Sections 1.403(b)–4 through 1.403(b)–11 are added to read as follows:

§ 1.403(b)–4 Contribution limitations.

(a) *Treatment of contributions in excess of limitations.* The exclusion provided under § 1.403(b)–3(a) applies to a participant only if the amounts contributed by the employer for the purchase of an annuity contract for the participant do not exceed the applicable limit under sections 415 and 402(g), as described in this section. Under § 1.403(b)–3(a)(4), a section 403(b) contract is required to include the limits on elective deferrals imposed by section 402(g), as described in paragraph (c) of this section. *See* paragraph (f) of this section for special rules concerning correction of excess contributions and deferrals. The limits imposed by section 415, § 1.403(b)–3(a)(9), section 402(g), § 1.403(b)–3(a)(4), and this section do not apply with respect to rollover contributions made to a section 403(b) contract, as described in § 1.403(b)–10(d), but after-tax contributions are taken into account under section 415, § 1.403(b)–3(a)(9), and this section.

(b) *Maximum annual contribution*—(1) *General rule.* In accordance with section 415(a)(2) and § 1.403(b)–3(b)(2), the contributions for any participant under a section 403(b) contract (*i.e.*, employer nonelective contributions (including matching contributions), section 403(b) elective deferrals, and after-tax contributions) are not permitted to exceed the limitations imposed by section 415. For this purpose, contributions made for a participant are aggregated to the extent applicable under sections 414(b), (c), (m), (n), and (o). For purposes of section 415(a)(2) and § 1.403(b)–1 through § 1.403(b)–11, a contribution means any annual addition, as defined in section 415(c).

(2) *Special rules.* See section 415(k)(4) for a special rule under which contributions to section 403(b) contracts are generally aggregated with contributions under other arrangements in applying section 415. For purposes of applying section 415(c)(1)(B) with respect to a section 403(b) contract, except as provided in section 415(c)(3)(C), a participant's includible compensation (as defined in § 1.403(b)–2) is substituted for the participant's compensation, as described in section 415(c)(3)(E). Any age 50 catch-up contributions under paragraph (c)(2) of this section are disregarded in applying section 415.

(c) *Section 403(b) elective deferrals*—(1) *Basic limit under section 402(g)(1).* In accordance with section 402(g)(1)(A), the section 403(b) elective deferrals for any individual are included in the individual's gross income to the extent the amount of such deferrals, plus all other elective deferrals for the individual, for the taxable year exceeds the applicable dollar amount under section 402(g)(1)(B). The applicable annual dollar amount under section 402(g)(1)(B) is: $11,000 for 2002; $12,000 for 2003; $13,000 for 2004; $14,000 for 2005; and $15,000 for 2006 and thereafter. After 2006, the $15,000 amount is adjusted for cost-of-living in the manner described in section 402(g)(4). See § 1.403(b)–5(b) for a universal availability rule that applies if any employee is permitted to have any section 403(b) elective deferrals made on his or her behalf.

(2) *Age 50 catch-up*—(i) *In general.* In accordance with section 414(v) and the regulations thereunder, a section 403(b) contract may provide for additional catch-up contributions for a participant who is age 50 by the end of the year, provided that such age 50 catch-up contributions do not exceed the catch-up limit under section 414(v)(2) for the taxable year. The maximum amount of additional age 50 catch-up contributions for a taxable year under section 414(v) is as follows: $1,000 for 2002; $2,000 for 2003; $3,000 for 2004; $4,000 for 2005; and $5,000 for 2006 and thereafter. After 2006, the $5,000 amount is adjusted for cost-of-living in the manner described in section 414(v)(2)(C). For additional requirements, see regulations under section 414(v).

(ii) *Coordination with special section 403(b) catch-up.* In accordance with sections 414(v)(6)(A)(ii) and 402(g)(7)(A), the age 50 catch-up described in this paragraph (c)(2) may apply for any taxable year in which a participant also qualifies for the special section 403(b) catch-up under paragraph (c)(3) of this section.

(3) *Special section 403(b) catch-up for certain organizations*—(i) *Amount of the special section 403(b) catch-up.* In the case of a qualified employee of a qualified organization for whom the basic section 403(b) elective deferrals for any year are not less than the applicable dollar amount under section 402(g)(1)(B), the section 403(b) elective deferral limitation of section 402(g)(1) for the taxable year of the qualified employee is increased by the least of—

(A) $3,000;

(B) The excess of—

(*1*) $15,000; over

(*2*) The total special section 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or

(C) The excess of—

(*1*) $5,000 multiplied by the number of years of service of the employee with the qualified organization; over

(*2*) The total elective deferrals (as defined at § 1.403(b)–2) made for the qualified employee by the qualified organization for prior years.

(ii) *Qualified organization.* (A) For purposes of this paragraph (c)(3), *qualified organization* means an eligible employer that is either—

(*1*) An educational organization described in section 170(b)(1)(A)(ii);

(*2*) A hospital;

(*3*) A health and welfare service agency (including a home health service agency); or

(*4*) A church-related organization. All entities that are in a church-related organization are treated as a single qualified organization (so that years of service and any special section 403(b) catch-up elective deferrals previously made for a qualified employee for a church within a church-related organization are taken into account for purposes of applying this paragraph (c)(3) to the employee with respect to any other entity within the same church-related organization).

(B) For purposes of this paragraph (c)(3)(ii), a *health and welfare service agency* means either an organization whose primary activity is to provide services that constitute medical care as defined in section 213(d)(1) (such as a hospice) or a section 501(c)(3) organization whose primary activity is the prevention of cruelty to individuals or animals, or which provides substantial personal services to the needy as part of its primary activity (such as a section 501(c)(3) organization that provides meals to needy individuals).

(iii) *Qualified employee.* For purposes of this paragraph (c)(3), *qualified employee* means an employee who has completed at least 15 years of service (as defined under paragraph (e) of this section) taking into account only

employment with the qualified organization.

(iv) *Coordination with age 50 catch-up.* In accordance with sections 402(g)(1)(C) and 402(g)(7), any catch-up amount contributed by an employee who is eligible for both an age 50 catch-up and a special section 403(b) catch-up is treated first as an amount contributed as a special section 403(b) catch-up to the extent a special section 403(b) catch-up is permitted, and then as an amount contributed as an age 50 catch-up (to the extent the catch-up amount exceeds the maximum special section 403(b) catch-up after taking into account sections 402(g) and 415(c), this paragraph (c)(3), and any limitations on the special section 403(b) catch-up that are imposed by the terms of the plan).

(4) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts illustrating application of the basic dollar limit.* Participant B, who is 45, is eligible to participate in a State university section 403(b) plan in 2006. B is not a qualified employee, as defined in paragraph (c)(3)(iii) of this section. The plan permits section 403(b) elective deferrals, but no other employer contributions are made under the plan. The plan provides limitations on section 403(b) elective deferrals up to the maximum permitted under paragraphs (c)(1) and (3) of this section and the additional age 50 catch-up amount described in paragraph (c)(2) of this section. For 2006, B will receive includible compensation of $42,000 from the eligible employer. B desires to elect to have the maximum section 403(b) elective deferral possible contributed in 2006. For 2006, the basic dollar limit for section 403(b) elective deferrals under paragraph (c)(1) of this section is $15,000 and the additional dollar amount permitted under the age 50 catch-up is $5,000.

(ii) *Conclusion.* B is not eligible for the age 50 catch-up in 2006 because B is 45 in 2006, or the special section 403(b) catch-up under paragraph (c)(3) of this section because B is not a qualified employee. Accordingly, the maximum section 403(b) elective deferral that B may elect for 2006 is $15,000.

Example 2. (i) *Facts illustrating application of the includible compensation limitation.* The facts are the same as in *Example 1,* except B's includible compensation is $14,000.

(ii) *Conclusion.* Under section 415(c), contributions may not exceed 100 percent of includible compensation. Accordingly, the maximum section 403(b) elective deferral that B may elect for 2006 is $14,000.

Example 3. (i) *Facts illustrating application of the age 50 catch-up.* Participant C, who is 55, is eligible to participate in a State university section 403(b) plan in 2006. The plan permits section 403(b) elective deferrals, but no other employer contributions are made under the plan. The plan provides limitations on section 403(b) elective deferrals up to the maximum permitted under paragraphs (c)(1) and (3) of this section and the additional age 50 catch-up amount described in paragraph (c)(2) of this section. For 2006, C will receive includible compensation of $48,000 from the eligible employer. C desires to elect to have the maximum section 403(b) elective deferral possible contributed in 2006. For 2006, the basic dollar limit for section 403(b) elective deferrals under paragraph (c)(1) of this section is $15,000 and the additional dollar amount permitted under the age 50 catch-up is $5,000. C does not have 15 years of service and thus is not a qualified employee, as defined in paragraph (c)(3)(iii) of this section.

(ii) *Conclusion.* C is eligible for the age 50 catch-up in 2006 because C is 55 in 2006. C is not eligible for the special section 403(b) catch-up under paragraph (c)(3) of this section because C is not a qualified employee (as defined in paragraph (c)(3)(iii) of this section). Accordingly, the maximum section 403(b) elective deferral that C may elect for 2006 is $20,000 ($15,000 plus $5,000).

Example 4. (i) *Facts illustrating application of both the age 50 and the special section 403(b) catch-up.* The facts are the same as in *Example 3,* except that C is a qualified employee for purposes of the special section 403(b) catch-up provisions in paragraph (c)(3) of this section. For 2006, the maximum additional section 403(b) elective deferral for which C qualifies under the special section 403(b) catch-up under paragraph (c)(3) of this section is $3,000.

(ii) *Conclusion.* The maximum section 403(b) elective deferrals that C may elect for 2006 is $23,000. This is the sum of the basic limit on section 403(b) elective deferrals under paragraph (c)(1) of this section equal to $15,000, plus the $3,000 additional special section 403(b) catch-up amount for which C qualifies under paragraph (c)(3) of this section, plus the additional age 50 catch-up amount of $5,000.

Example 5. (i) *Facts illustrating calculation of years of service with a predecessor organization for purposes of the special section 403(b) catch-up.* The facts are the same as in *Example 4,* except that C has previously made special section 403(b) catch-up deferrals to a section 403(b) plan maintained by a hospital which was acquired by C's current eligible employer which is a hospital.

(ii) *Conclusion.* The special section 403(b) catch-up amount for which C qualifies under paragraph (c)(3) of this section must be calculated taking into account C's prior years of service and special section 403(b) catch-up deferrals with the predecessor hospital if and only if C did not have any severance from service in connection with the acquisition.

Example 6. (i) *Facts illustrating application of the age 50 catch-up and the section 415(c) dollar limitation.* The facts are the same as in *Example 4,* except that the employer makes a nonelective contribution for each employee equal to 20 percent of C's compensation (which is $48,000). Thus, the employer makes a nonelective contribution for C for 2006 equal to $9,600. The plan provides that a participant is not permitted to make section 403(b) elective deferrals to the extent the section 403(b) elective deferrals would result in contributions in excess of the maximum permitted under section 415 and provides that contributions are reduced in the following order: the special section 403(b) catch-up elective deferrals under paragraph (c)(3) of this section are reduced first; the age 50 catch-up elective deferrals under paragraph (c)(2) of this section are reduced second; and then the basic section 403(b) elective deferrals under paragraph (c)(1) of this section are reduced. For 2006, it is assumed that the applicable dollar limit under section 415(c)(1)(A) is $44,000.

(ii) *Conclusion.* The maximum section 403(b) elective deferral that C may elect for 2006 is $23,000. This is the sum of the basic limit on section 403(b) elective deferrals under paragraph (c)(1) of this section equal to $15,000, plus the $3,000 additional special section 403(b) catch-up amount for which C qualifies under paragraph (c)(3) of this section, plus the additional age 50 catch-up amount of $5,000. The limit in paragraph (b) of this section would not be exceeded because the sum of the $9,600 nonelective contribution and the $23,000 section 403(b) elective deferrals does not exceed the lesser of $49,000 (which is the sum of $44,000 plus the $5,000 additional age 50 catch-up amount) or $53,000 (which is the sum of C's includible compensation for 2006 ($48,000) plus the $5,000 additional age 50 catch-up amount).

Example 7. (i) *Facts further illustrating application of the age 50 catch-up and the section 415(c) dollar limitation.* The facts are the same as in *Example 6,* except that C's includible compensation for 2006 is $56,000 and the plan provides for a nonelective contribution equal to 50 percent of includible compensation, so that the employer nonelective contribution for C for 2006 is $28,000 (50 percent of $56,000).

(ii) *Conclusion.* The maximum section 403(b) elective deferral that C may elect for 2006 is $21,000. A section 403(b) elective deferral in excess of this amount would exceed the sum of the limit in section 415(c)(1)(A) plus the additional age 50 catch-up amount, because the sum of the employer's nonelective contribution of $28,000 plus a section 403(b) elective deferral in excess of $21,000 would exceed $49,000 (the sum of the $44,000 limit in section 415(c)(1)(A) plus the $5,000 additional age 50 catch-up amount).

Example 8. (i) *Facts further illustrating application of the age 50 catch-up and the section 415(c) dollar limitation.* The facts are the same as in *Example 7,* except that the plan provides for a nonelective contribution for C equal to $44,000 (which is the limit in section 415(c)(1)(A)).

(ii) *Conclusion.* The maximum section 403(b) elective deferral that C may elect for 2006 is $5,000. A section 403(b) elective deferral in excess of this amount would exceed the sum of the limit in section 415(c)(1)(A) plus the additional age 50 catch-up amount ($5,000), because the sum of the employer's nonelective contribution of $44,000 plus a section 403(b) elective deferral in excess of $5,000 would exceed $49,000 (the sum of the $44,000 limit in section 415(c)(1)(A) plus the $5,000 additional age 50 catch-up amount).

Example 9. (i) *Facts illustrating application of the age 50 catch-up and the section 415(c) includible compensation limitation.* The facts are the same as in *Example 7*, except that C's includible compensation for 2006 is $28,000, so that the employer nonelective contribution for C for 2006 is $14,000 (50 percent of $28,000).

(ii) *Conclusion.* The maximum section 403(b) elective deferral that C may elect for 2006 is $19,000. A section 403(b) elective deferral in excess of this amount would exceed the sum of the limit in section 415(c)(1)(B) plus the additional age 50 catch-up amount, because C's includible compensation is $28,000 and the sum of the employer's nonelective contribution of $14,000 plus a section 403(b) elective deferral in excess of $19,000 would exceed $33,000 (which is the sum of 100 percent of C's includible compensation plus the $5,000 additional age 50 catch-up amount).

Example 10. (i) *Facts illustrating that section 403(b) elective deferrals cannot exceed compensation otherwise payable.* Employee D is age 60, has includible compensation of $14,000, and wishes to contribute section 403(b) elective deferrals of $20,000 for the year. No nonelective contributions are made for Employee D.

(ii) *Conclusion.* The maximum limit on section 403(b) elective deferrals for a participant with compensation less than the maximum dollar limit in section 415(c) is 100 percent of includible compensation, plus the $5,000 additional age 50 catch-up amount. However, because a contribution is a section 403(b) elective deferral only if it is a result of a compensation reduction, D cannot make section 403(b) elective deferrals in excess of D's actual compensation.

Example 11. (i) *Facts illustrating calculation of the special section 403(b) catch-up.* For 2006, employee E, who is age 50, is eligible to participate in a section 403(b) plan of hospital H, which is a section 501(c)(3) organization. H's plan permits section 403(b) elective deferrals and provides for an employer contribution of 10 percent of a participant's compensation with that employer for the taxable year. The plan provides limitations on section 403(b) elective deferrals up to the maximum permitted under paragraphs (c)(1), (2), and (3) of this section. For 2006, E's includible compensation is $50,000. E wishes to elect to have the maximum section 403(b) elective deferral possible contributed in 2006. E has previously made $62,000 of section 403(b) elective deferrals under the plan, but has never made an election for a special section 403(b) catch-up elective deferral. For 2006, the basic dollar limit for section 403(b) elective deferrals under paragraph (c)(1) of this section is $15,000, the additional dollar amount permitted under the age 50 catch-up is $5,000, E's employer will make a nonelective contribution of $5,000 (10% of $50,000 compensation), and E is a qualified employee of a qualified employer as defined in paragraph (c)(3) of this section.

(ii) *Conclusion.* The maximum section 403(b) elective deferrals that E may elect for 2006 is $23,000. This is the sum of the basic limit on section 403(b) elective deferrals for 2006 under paragraph (c)(1) of this section equal to $15,000, plus the $3,000 maximum additional special section 403(b) catch-up amount for which D qualifies in 2006 under paragraph (c)(3) of this section, plus the additional age 50 catch-up amount of $5,000. The limitation on the additional special section 403(b) catch-up amount is not less than $3,000 because the limitation at paragraph (c)(3)(i)(B) of this section is $15,000 ($15,000 minus zero) and the limitation at paragraph (c)(3)(i)(C) of this section is $13,000 ($5,000 times 15, minus $62,000 of total deferrals in prior years).

Example 12. (i) *Facts illustrating calculation of the special section 403(b) catch-up in the next calendar year.* The facts are the same as in *Example 11*, except that, for 2007, E has includible compensation of $60,000. For 2007, E now has previously made $85,000 of section 403(b) elective deferrals ($62,000 deferred before 2006, plus the $15,000 in basic section 403(b) elective deferrals in 2006, the $3,000 maximum additional special section 403(b) catch-up amount in 2006, plus the $5,000 age 50 catch-up amount in 2006). However, the $5,000 age 50 catch-up amount deferred in 2006 is disregarded for purposes of applying the limitation at paragraph (c)(3)(i)(B) of this section to determine the special section 403(b) catch-up amount. Thus, for 2007, only $80,000 of section 403(b) elective deferrals are taken into account in applying the limitation at paragraph (c)(3)(i)(B) of this section. For 2007, the basic dollar limit for section 403(b) elective deferrals under paragraph (c)(1) of this section is assumed to be $16,000, the additional dollar amount permitted under the age 50 catch-up is assumed to be $5,000, and E's employer contributes $6,000 (10% of $60,000 compensation) as a non-elective contribution.

(ii) *Conclusion.* The maximum section 403(b) elective deferral that D may elect for 2007 is $21,000. This is the sum of the basic limit on section 403(b) elective deferrals under paragraph (c)(1) of this section equal to $16,000, plus the additional age 50 catch-up amount of $5,000. E is not entitled to any additional special section 403(b) catch-up amount for 2007 under paragraph (c)(3) due to the limitation at paragraph (c)(3)(i)(C) of this section (16 times $5,000 equals $80,000, minus D's total prior section 403(b) elective deferrals of $80,000 equals zero).

(d) *Employer contributions for former employees*—(1) *Includible compensation deemed to continue for nonelective contributions.* For purposes of applying paragraph (b) of this section, a former employee is deemed to have monthly includible compensation for the period through the end of the taxable year of the employee in which he or she ceases to be an employee and through the end of each of the next five taxable years. The amount of the monthly includible compensation is equal to one twelfth of the former employee's includible compensation during the former employee's most recent year of service. Accordingly, nonelective employer contributions for a former employee must not exceed the limitation of section 415(c)(1) up to the lesser of the dollar amount in section 415(c)(1)(A) or the former employee's annual includible compensation based on the former employee's average monthly compensation during his or her most recent year of service.

(2) *Examples.* The provisions of paragraph (d)(1) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* College M is a section 501(c)(3) organization operated on the basis of a June 30 fiscal year that maintains a section 403(b) plan for its employees. In 2004, M amends the plan to provide for a temporary early retirement incentive under which the college will make a nonelective contribution for any participant who satisfies certain minimum age and service conditions and who retires before June 30, 2006. The contribution will equal 110 percent of the participant's rate of pay for one year and will be payable over a period ending no later than the end of the fifth fiscal year that begins after retirement. It is assumed for purposes of this *Example 1* that, in accordance with § 1.401(a)(4)–10(b) and under the facts and circumstances, the post-retirement contributions made for participants who satisfy the minimum age and service conditions and retire before June 30, 2006 do not discriminate in favor of former employees who are highly compensated employees. Employee A retires under the early retirement incentive on March 12, 2006, and A's annual includible compensation for the period from March 1, 2005 through February 28, 2006 (which is A's most recent one year of service) is $30,000. The applicable dollar limit under section 415(c)(1)(A) is assumed to be $44,000 for 2006 and $45,000 for 2007. The college contributes $30,000 for A for 2006 and $3,000 for A for 2007 (totaling $33,000 or 110 percent of $30,000). No other contributions are made to a section 403(b) contract for A for those years.

(ii) *Conclusion.* The contributions made for A do not exceed A's includible compensation for 2006 or 2007.

Example 2. (i) *Facts.* College N is a section 501(c)(3) organization that maintains a section 403(b) plan for its employees. The plan provides for N to make monthly nonelective contributions equal to 20 percent of the monthly includible compensation for each eligible employee. In addition, the plan provides for contributions to continue for 5 years following the retirement of any employee after age 64 and completion of at least 20 years of service (based on the employee's average annual rate of base salary in the preceding 3 calendar years ended before the date of retirement). It is assumed for purposes of this *Example 2* that, in accordance with § 1.401(a)(4)–10(b) and under the facts and circumstances, the post-retirement contributions made for participants who satisfy the minimum age and service conditions do not discriminate in favor of former employees who are highly compensated employees. Employee B retires on July 1, 2006, at age 64 after completion of 20 or more years of service. At that date, B's annual includible compensation for the

most recently ended fiscal year of N is $72,000 and B's average monthly rate of base salary for 2003 through 2005 is $5,000. N contributes $1,200 per month (20 percent of 1/12th of $72,000) from January of 2006 through June of 2006 and contributes $1,000 (20 percent of $5,000) per month for B from July of 2006 through June of 2011. The applicable dollar limit under section 415(c)(1)(A) is assumed to be at least $44,000 for 2006 through 2011. No other contributions are made to a section 403(b) contract for B for those years.

(ii) *Conclusion.* The contributions made for B do not exceed B's includible compensation for any of the years from 2006 through 2010.

(3) *Disabled employees.* See also section 415(c)(3)(C) which sets forth a special rule under which compensation may be treated as continuing for purposes of section 415 for certain former employees who are disabled.

(e) *Special rules for determining years of service*—(1) *In general.* For purposes of determining a participant's includible compensation under paragraph (b)(2) of this section and a participant's years of service under paragraphs (c)(3) (special section 403(b) catch-up for qualified employees of certain organizations) and (d) (employer contributions for former employees) of this section, an employee's number of years of service depend on whether the employee has a full year during which the individual is a full-time employee of the eligible employer, and any fraction of a year for each part of a year during which the individual is a full-time or part-time employee of the eligible employer. An individual's number of years of service equals the aggregate of the annual work periods during which the individual is employed by the eligible employer.

(2) *Work period.* A year of service is based on the employer's annual work period, not the employee's taxable year. For example, in determining whether a university professor is employed full time, the annual work period is the school's academic year. However, in no case may an employee accumulate more than one year of service in a twelve-month period.

(3) *Service with more than one eligible employer*—(i) *General rule.* With respect to any section 403(b) contract of an eligible employer, except as provided in paragraph (e)(3)(ii) of this section, any period during which an individual is not an employee of that eligible employer is disregarded for purposes of this paragraph (e).

(ii) *Special rule for church employees.* With respect to any section 403(b) contract of an eligible employer that is a church-related organization, any period during which an individual is an employee of that eligible employer and any other eligible employer that is a church-related organization that has an association (as defined in section 414(e)(3)(D)) with that eligible employer is taken into account on an aggregated basis, but any period during which an individual is not an employee of a church-related organization or is an employee of a church-related organization that does not have an association with that eligible employer is disregarded for purposes of this paragraph (e).

(4) *Full-time employee for full year.* Each annual work period during which an individual is employed full time by the eligible employer constitutes one year of service. In determining whether an individual is employed full-time, the amount of work which he or she actually performs is compared with the amount of work that is normally required of individuals performing similar services from which substantially all of their annual compensation is derived.

(5) *Other employees.* (i) An individual is treated as performing a fraction of a year of service for each annual work period during which he or she is a full-time employee for part of the annual work period and for each annual work period during which he or she is a part-time employee either for the entire annual work period or for a part of the annual work period.

(ii) In determining the fraction that represents the fractional year of service for an individual employed full time for part of an annual work period, the numerator is the period of time (*e.g.*, weeks or months) during which the individual is a full-time employee during that annual work period, and the denominator is the period of time that is the annual work period.

(iii) In determining the fraction that represents the fractional year of service of an individual who is employed part time for the entire annual work period, the numerator is the amount of work performed by the individual, and the denominator is the amount of work normally required of individuals who perform similar services and who are employed full time for the entire annual work period.

(iv) In determining the fraction representing the fractional year of service of an individual who is employed part time for part of an annual work period, the fractional year of service that would apply if the individual were a part-time employee for a full annual work period is multiplied times the fractional year of service that would apply if the individual were a full-time employee for the part of an annual work period.

(6) *Work performed.* For purposes of this paragraph (e), in measuring the amount of work of an individual performing particular services, the work performed is determined based on the individual's hours of service (as defined under section 410(a)(3)(C)), except that a plan may use a different measure of work if appropriate under the facts and circumstances. For example, a plan may provide for a university professor's work to be measured by the number of courses taught during an annual work period in any case in which that individual's work assignment is generally based on a specified number of courses to be taught.

(7) *Most recent one-year period of service.* For purposes of paragraph (d) of this section, in the case of a part-time employee or a full-time employee who is employed for only part of the year determined on the basis of the employer's annual work period, the employee's most recent periods of service are aggregated to determine his or her most recent one-year period of service. In such a case, there is first taken into account his or her service during the annual work period for which the last year of service's includible compensation is being determined; then there is taken into account his or her service during his next preceding annual work period based on whole months; and so forth, until the employee's service equals, in the aggregate, one year of service.

(8) *Less than one year of service considered as one year.* If, at the close of a taxable year, an employee has, after application of all of the other rules in this paragraph (e), some portion of one year of service (but has accumulated less than one year of service), the employee is deemed to have one year of service. Except as provided in this paragraph (e)(8), fractional years of service are not rounded up.

(9) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. (i) *Facts.* Individual C is employed half-time in 2004 and 2005 as a clerk by H, a hospital which is a section 501(c)(3) organization. C earns $20,000 from H in each of those years, and retires on December 31, 2005.

(ii) *Conclusion.* For purposes of determining C's includible compensation during C's last year of service under paragraph (d) of this section, C's most recent periods of service are aggregated to determine C's most recent one-year period of service. In this case, since C worked half-time in 2004 and 2005, the compensation C earned in those two years are aggregated to produce C's includible compensation for C's last full year in service. Thus, in this case, the $20,000 that C earned in 2004 and 2005 for C's half-time

work are aggregated, so that C has $40,000 of includible compensation for C's most recent one-year of service for purposes of applying paragraphs (b)(2), (c)(3), and (d) of this section.

Example 2. (i) *Facts.* Individual A is employed as a part-time professor by public University U during the first semester of its two-semester 2004–2005 academic year. While A teaches one course generally for 3 hours a week during the first semester of the academic year, U's full-time faculty members generally teach for 9 hours a week during the full academic year.

(ii) *Conclusion.* For purposes of calculating how much of a year of service A performs in the 2004–05 academic year (before application of the special rules of paragraphs (e)(7) and (8) of this section concerning less than one year of service), paragraph (e)(5)(iv) of this section is applied as follows: since A teaches one course at U for 3 hours per week for 1 semester and other faculty members at U teach 9 hours per week for 2 semesters, A is considered to have completed 3/18 or 1/6 of a year of service during the 2004–05 academic year, determined as follows:

(A) The fractional year of service if A were a part-time employee for a full year is 3/9 (number of hours employed divided by the usual number of hours of work required for that position).

(B) The fractional year of service if A were a full-time employee for half of a year is 1/2 (one semester, divided by the usual 2-semester annual work period).

(C) These fractions are multiplied to obtain the fractional year of service: 3/9 times 1/2, or 3/18, equals 1/6 of a year of service.

(f) *Excess contributions or deferrals*—(1) *In general.* Any contribution made for a participant to a section 403(b) contract for the taxable year that exceeds either the maximum annual contribution limit set forth in paragraph (b) of this section or the maximum annual section 403(b) elective deferral limit set forth in paragraph (c) of this section constitutes an excess contribution that is included in gross income for that taxable year. A contract does not fail to satisfy the requirements of § 1.403(b)–3, the distribution rules of §§ 1.403(b)–6 or 1.403(b)–9, or the funding rules of § 1.403(b)–8 solely by reason of a distribution made under this paragraph (f). See also section 4973 for an excise tax applicable with respect to excess contributions to a custodial account.

(2) *Excess section 403(b) elective deferrals.* A section 403(b) contract may provide that any excess deferral as a result of a failure to comply with the limitation under paragraph (c) of this section for a taxable year with respect to any section 403(b) elective deferral made for a participant by the employer will be distributed to the participant, with allocable net income, no later than April 15 of the following taxable year or otherwise in accordance with section 402(g). See section 402(g)(2)(A) for rules permitting the participant to allocate excess deferrals among the plans in which the participant has made elective deferrals, and see section 402(g)(2)(C) for special rules to determine the tax treatment of such a distribution.

(3) *Special rule for small excess amount.* See section 4979(f)(2)(B) for a special rule applicable if excess matching contributions, excess after-tax contributions, and excess section 403(b) elective deferrals do not exceed $100.

(4) *Example.* The provisions of this paragraph (f) are illustrated by the following example:

Example. (i) *Facts.* Individual D makes section 403(b) elective deferrals totaling $15,500 for 2006, when D is age 45 and the applicable limit on section 403(b) elective deferrals is $15,000. On April 14, 2007, the plan refunds the $500 excess along with applicable earnings of $65.

(ii) *Conclusion.* The $565 payment constitutes a distribution of an excess deferral under paragraph (f)(2) of this section. Under section 402(g), the $500 excess deferral is included in D's gross income for 2006. The additional $65 is included in D's gross income for 2007 and, because the distribution is made by April 15, 2007 (as provided in section 402(g)(2)), the $65 is not subject to the additional 10 percent income tax on early distributions under section 72(t).

§ 1.403(b)–5 Nondiscrimination rules.

(a) *Nondiscrimination rules for contributions other than section 403(b) elective deferrals*—(1) *General rule.* Under section 403(b)(12)(A)(i), employer contributions and employee after-tax contributions must satisfy all of the following requirements (the nondiscrimination requirements) in the same manner as a qualified plan under section 401(a):

(i) Section 401(a)(4) (relating to nondiscrimination in contributions and benefits), taking section 401(a)(5) into account.

(ii) Section 401(a)(17) (limiting the amount of compensation that can be taken into account).

(iii) Section 401(m) (relating to matching and after-tax contributions).

(iv) Section 410(b) (relating to minimum coverage).

(2) *Nonapplication to section 403(b) elective deferrals.* The requirements of this paragraph (a) do not apply to section 403(b) elective deferrals.

(3) *Compensation for testing.* Except as may otherwise be specifically permitted under the sections referenced in paragraph (a)(1) of this section, compliance with those provisions is tested using compensation as defined in section 414(s) (and without regard to section 415(c)(3)(E)).

(4) *Employer aggregation rules.* See regulations under section 414 for rules treating entities as a single employer for purposes of the nondiscrimination requirements.

(5) *Special rules for governmental plans.* Paragraphs (a)(1)(i), (iii), and (iv) of this section do not apply to a governmental plan as defined in section 414(d) (but contributions to a governmental plan must comply with paragraphs (a)(1)(ii) and (b) of this section).

(b) *Universal availability required for section 403(b) elective deferrals*—(1) *General rule.* Under section 403(b)(12)(A)(ii), all employees of the eligible employer must be permitted to have section 403(b) elective deferrals contributed on their behalf if any employee of the eligible employer may elect to have the organization make section 403(b) elective deferrals. The employee's right to have section 403(b) elective deferrals made on his or her behalf includes the right to section 403(b) elective deferrals up to the lesser of the applicable limits in § 1.403(b)–4(c) (including any permissible catch-up elective deferrals under § 1.403(b)–4(c)(2) and (3)) or the applicable limits under the contract with the largest limitation, and applies to part-time employees as well as full-time employees.

(2) *Effective opportunity required.* A section 403(b) plan satisfies this paragraph (b) only if the plan provides an employee with an effective opportunity to make (or change) a cash or deferred election (as defined at § 1.401(k)–1(a)(3)) at least once during each plan year. Whether an employee has an effective opportunity is determined based on all the relevant facts and circumstances, including notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections. An effective opportunity is not considered to exist if there are any other rights or benefits that are conditioned (directly or indirectly) upon a participant making or failing to make a cash or deferred election with respect to a contribution to a section 403(b) contract.

(3) *Special rules.* (i) In the case of a section 403(b) plan that covers the employees of more than one section 501(c)(3) organization, the universal availability requirement of this paragraph (b) applies separately to each common law entity, *i.e.*, to each section 501(c)(3) organization. In the case of a section 403(b) plan that covers the employees of more than one State entity, this requirement applies separately to each entity that is not part of a common payroll. An employer may condition the employee's right to have

section 403(b) elective deferrals made on his or her behalf on the employee electing a section 403(b) elective deferral of more than $200 for a year.

(ii) For purposes of this paragraph (b)(3), an employer that historically has treated one or more of its various geographically distinct units as separate for employee benefit purposes may treat each unit as a separate organization if the unit is operated independently on a day-to-day basis. Units are not geographically distinct if such units are located within the same Standard Metropolitan Statistical Area (SMSA).

(4) *Special exclusions*—(i) *Exclusions for special types of employees.* A plan does not fail to satisfy the universal availability requirement of this paragraph (b) merely because it excludes one or more of the types of employees listed in paragraph (b)(4)(ii) of this section. If any employee listed in paragraph (b)(4)(ii)(A) through (E) of this section has the right to have section 403(b) elective deferrals made on his or her behalf, then no employees listed in that subparagraph may be excluded under this paragraph (b)(4).

(ii) *List of special types of excludible employees.* The following types of employees are listed in this paragraph (b)(4)(ii):

(A) Employees who are eligible under a section 457(b) eligible governmental plan of the employer which permits an amount to be contributed or deferred at the election of the employee.

(B) Employees who are eligible to make a cash or deferred election (as defined at § 1.401(k)–1(a)(3)) under a section 401(k) plan of the employer.

(C) Employees who are non-resident aliens described in section 410(b)(3)(C).

(D) Subject to the conditions applicable under section 410(b)(4) (including section 410(b)(4)(B) permitting separate testing for employees not meeting minimum age and service requirements), employees who are students performing services described in section 3121(b)(10).

(E) Subject to the conditions applicable under section 410(b)(4), employees who normally work fewer than 20 hours per week. For this purpose, an employee normally works fewer than 20 hours per week if and only if—

(*1*) For the 12-month period beginning on the date the employee's employment commenced, the employer reasonably expects the employee to work fewer than 1,000 hours of service (as defined in section 410(a)(3)(C)) in such period; and

(*2*) For each plan year ending after the close of the 12-month period beginning on the date the employee's employment commenced (or, if the plan so provides, each subsequent 12-month period), the employee worked fewer than 1,000 hours of service in the preceding 12-month period. (*See*, however, section 202(a)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829) Public Law 93–406, and regulations under section 410(a) of the Internal Revenue Code applicable with respect to plans that are subject to Title I of ERISA.)

(c) *Plan required.* Contributions to an annuity contract do not satisfy the requirements of this section unless the contributions are made pursuant to a plan, as defined in § 1.403(b)–3(b)(3), and the terms of the plan satisfy this section.

(d) *Certain requirements not applicable to a church plan.* This section does not apply to a section 403(b) contract purchased by a church (as defined in § 1.403(b)–2).

(e) *Other rules.* This section only reflects requirements of the Internal Revenue Code applicable for purposes of section 403(b) and does not include other requirements. Specifically, this section does not reflect the requirements of the ERISA that may apply with respect to section 403(b), such as the vesting requirements at 29 U.S.C. 1053.

§ 1.403(b)–6 Timing of distributions and benefits.

(a) *Distributions generally.* This section includes special rules regarding the timing of distributions from, and the benefits that may be provided under, a section 403(b) contract, including limitations on when early distributions can be made (in paragraphs (b) through (d) of this section), required minimum distributions (in paragraph (e) of this section), and special rules relating to loans (in paragraph (f) of this section) and incidental benefits (in paragraph (g) of this section).

(b) *Distributions from contracts other than custodial accounts or amounts attributable to section 403(b) elective deferrals.* Except as provided in paragraph (c) of this section relating to distributions from custodial accounts, paragraph (d) of this section relating to distributions attributable to section 403(b) elective deferrals, § 1.403(b)–4(f) (relating to correction of excess deferrals), or § 1.403(b)–10(a) (relating to plan termination), a section 403(b) contract is permitted to distribute retirement benefits to the participant no earlier than upon the earliest of the participant's severance from employment or upon the prior occurrence of some event, such as after a fixed number of years, the attainment of a stated age, or disability. See § 1.401–1(b)(1)(ii) for additional guidance.

(c) *Distributions from custodial accounts that are not attributable to section 403(b) elective deferrals.* Except as provided in § 1.403(b)–4(f) (relating to correction of excess deferrals) or § 1.403(b)–10(a) (relating to plan termination), distributions from a custodial account, as defined in § 1.403(b)–8(d)(2), may not be paid to a participant before the participant has a severance from employment, dies, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½. Any amounts transferred out of a custodial account to an annuity contract or retirement income account, including earnings thereon, continue to be subject to this paragraph (c). This paragraph (c) does not apply to distributions that are attributable to section 403(b) elective deferrals.

(d) *Distribution of section 403(b) elective deferrals*—(1) *Limitation on distributions*—(i) *General rule.* Except as provided in paragraph (d)(2) of this section (relating to distributions on account of hardship), § 1.403(b)–4(f) (relating to correction of excess deferrals), or § 1.403(b)–10(a) (relating to plan termination), distributions of amounts attributable to section 403(b) elective deferrals may not be paid to a participant earlier than the earliest of the date on which the participant has a severance from employment, dies, has a hardship, becomes disabled (within the meaning of section 72(m)(7)), or attains age 59½.

(ii) *Special rule for pre-1989 section 403(b) elective deferrals.* For special rules relating to amounts held as of the close of the taxable year beginning before January 1, 1989 (which does not apply to earnings thereon), see section 1123(e)(3) of the Tax Reform Act of 1986 (100 Stat. 2085, 2475) Public Law 99–514, and section 1011A(c)(11) of the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342, 3476) Public Law 100–647.

(2) *Hardship rules.* A hardship distribution under this paragraph (d) is defined as, and is subject to the rules in, § 1.401(k)–1(d)(3) (including limiting the amount of a distribution in the case of hardship to the amount necessary to satisfy the hardship). In addition, a hardship distribution is limited to the aggregate dollar amount of the participant's section 403(b) elective deferrals under the contract (and may not include any income thereon), reduced by the aggregate dollar amount of the distributions previously made to the participant from the contract.

(3) *Failure to keep separate accounts.* If a section 403(b) contract includes

both section 403(b) elective deferrals and other contributions and the section 403(b) elective deferrals are not maintained in a separate account, then distributions may not be made earlier than the later of:

(i) Any date permitted under this paragraph (d) with respect to 403(b) elective deferrals; and

(ii) Any date permitted under paragraph (b) or (c) of this section with respect to contributions that are not section 403(b) elective deferrals (whichever applies to the contributions that are not section 403(b) elective deferrals).

(e) *Minimum required distributions for eligible plans*—(1) *In general.* Under section 403(b)(10), a section 403(b) contract must meet the minimum distribution requirements of section 401(a)(9) (in both form and operation). See section 401(a)(9) and the regulations thereunder for these requirements.

(2) *Treatment as IRAs.* For purposes of applying the distribution rules of section 401(a)(9) to section 403(b) contracts, section 403(b) contracts are treated as individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) (IRAs). Consequently, except as otherwise provided in paragraphs (e)(3) through (e)(5) of this section, the distribution rules in section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in § 1.408–8 for purposes of determining required minimum distributions.

(3) *Required beginning date.* The required beginning date for purposes of section 403(b)(10) is April 1 of the calendar year following the later of the calendar year in which the employee attains 70½ or the calendar year in which the employee retires from employment with the employer maintaining the plan. However, for any section 403(b) contract that is not part of a government plan or church plan, the required beginning date for a 5-percent owner is April 1 of the calendar year following the earlier of the calendar year in which the employee attains 70½ or the calendar year in which the employee retires from employment with the employer maintaining the plan.

(4) *Surviving spouse rule does not apply.* The special rule in § 1.408–8, A–5 (relating to spousal beneficiaries), does not apply to a section 403(b) contract. Thus, the surviving spouse of a participant is not permitted to treat a section 403(b) contract as the spouse's own section 403(b) contract, even if the spouse is the sole beneficiary.

(5) *Retirement income accounts.* For purposes of § 1.401(a)(9)–6, A–4 (relating to annuity contracts), annuity payments provided with respect to retirement income accounts do not fail to satisfy the requirements of section 401(a)(9) merely because the payments are not made under an annuity contract purchased from an insurance company, provided that the relationship between the annuity payments and the retirement income accounts is not inconsistent with any rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter). See § 1.403(b)–9(a)(5).

(6) *Special rules for benefits accruing before December 31, 1986.* (i) The distribution rules provided in section 401(a)(9) do not apply to the undistributed portion of the account balance under the section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). The distribution rules provided in section 401(a)(9) apply to all benefits under section 403(b) contracts accruing after December 31, 1986 (post-'86 account balance), including earnings after December 31, 1986. Consequently, the post-'86 account balance includes earnings after December 31, 1986, on contributions made before January 1, 1987, in addition to the contributions made after December 31, 1986, and earnings thereon.

(ii) The issuer or custodian of the section 403(b) contract must keep records that enable it to identify the pre-'87 account balance and subsequent changes as set forth in paragraph (d)(6)(iii) of this section and provide such information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer or custodian does not keep such records, the entire account balance is treated as subject to section 401(a)(9).

(iii) In applying the distribution rules in section 401(a)(9), only the post-'86 account balance is used to calculate the required minimum distribution for a calendar year. The amount of any distribution from a contract is treated as being paid from the post-'86 account balance to the extent the distribution is required to satisfy the minimum distribution requirement with respect to that contract for a calendar year. Any amount distributed in a calendar year from a contract in excess of the required minimum distribution for a calendar year with respect to that contract is treated as paid from the pre-'87 account balance, if any, of that contract.

(iv) If an amount is distributed from the pre-'87 account balance and rolled over to another section 403(b) contract, the amount is treated as part of the post-'86 account balance in that second contract. However, if the pre-'87 account balance under a section 403(b) contract is directly transferred to another section 403(b) contract (as permitted under § 1.403(b)–10(b)), the amount transferred retains its character as a pre-'87 account balance, provided the issuer of the transferee contract satisfies the recordkeeping requirements of paragraph (e)(6)(ii) of this section.

(v) The distinction between the pre-'87 account balance and the post-'86 account balance provided for under this paragraph (e)(6) of this section has no relevance for purposes of determining the portion of a distribution that is includible in income under section 72.

(vi) The pre-'87 account balance must be distributed in accordance with the incidental benefit requirement of § 1.401–1(b)(1)(i). Distributions attributable to the pre-'87 account balance are treated as satisfying this requirement if all distributions from the section 403(b) contract (including distributions attributable to the post-'86 account balance) satisfy the requirements of § 1.401–1(b)(1)(i) without regard to this section, and distributions attributable to the post-'86 account balance satisfy the rules of this paragraph (e). Distributions attributable to the pre-'87 account balance are treated as satisfying the incidental benefit requirement if all distributions from the section 403(b) contract (including distributions attributable to both the pre-'87 account balance and the post-'86 account balance) satisfy the rules of this paragraph (e).

(7) *Application to multiple contracts for an employee.* The required minimum distribution must be separately determined for each section 403(b) contract of an employee. However, because, as provided in paragraph (e)(2) of this section, the distribution rules in section 401(a)(9) apply to section 403(b) contracts in accordance with the provisions in § 1.408–8, the required minimum distribution from one section 403(b) contract of an employee is permitted to be distributed from another section 403(b) contract in order to satisfy section 401(a)(9). Thus, as provided in § 1.408–8, A–9, with respect to IRAs, the required minimum distribution amount from each contract is then totaled and the total minimum distribution taken from any one or more of the individual section 403(b) contracts. However, consistent with the rules in § 1.408–8, A–9, only amounts in section 403(b) contracts that an individual holds as an employee may be aggregated. Amounts in section 403(b) contracts that an

individual holds as a beneficiary of the same decedent may be aggregated, but such amounts may not be aggregated with amounts held in section 403(b) contracts that the individual holds as the employee or as the beneficiary of another decedent. Distributions from section 403(b) contracts do not satisfy the minimum distribution requirements for IRAs, nor do distributions from IRAs satisfy the minimum distribution requirements for section 403(b) contracts.

(f) *Loans.* The determination of whether the availability of a loan, the making of a loan, or a failure to repay a loan made from an issuer of a section 403(b) contract to a participant or beneficiary is treated as a distribution (directly or indirectly) for purposes of this section, and the determination of whether the availability of the loan, the making of the loan, or a failure to repay the loan is in any other respect a violation of the requirements of section 403(b) and these regulations, depends on the facts and circumstances. Among the facts and circumstances are whether the loan has a fixed repayment schedule and bears a reasonable rate of interest, and whether there are repayment safeguards to which a prudent lender would adhere. Thus, for example, a loan must bear a reasonable rate of interest in order to be treated as not being a distribution. However, a plan loan offset is a distribution for purposes of this section. *See* § 1.72(p)–1, Q&A–13. See also § 1.403(b)–7(d) relating to the application of section 72(p) with respect to the taxation of a loan made under a section 403(b) contract. (Further, see 29 CFR 2550.408b–1 of the Department of Labor regulations concerning additional requirements applicable with respect to plans that are subject to Title I of ERISA.)

(g) *Death benefits and other incidental benefits.* An annuity is not a section 403(b) contract if it fails to satisfy the incidental benefit requirement of § 1.401–1(b)(1)(i). For this purpose, to the extent the incidental benefit requirement of § 1.401–1(b)(1)(i) requires a distribution of the participant's or beneficiary's accumulated benefit, that requirement is deemed to be satisfied if distributions satisfy the minimum distribution requirements of section 401(a)(9).

(h) *Special rule regarding severance from employment.* For purposes of this section, severance from employment occurs on any date on which an employee ceases to be an employee of an eligible employer (*e.g.*, by the section 501(c)(3) organization that maintains the plan, assuming that only one section 501(c)(3) organization maintains the plan), even though the employee may continue to be employed either by another entity that is treated as the same employer where either that other entity is not an entity that can be an eligible employer (such as transferring from a section 501(c)(3) organization to a for-profit subsidiary of the section 501(c)(3) organization) or in a capacity that is not employment with an eligible employer (*e.g.*, ceasing to be an employee performing services for a public school but continuing to work for the same State employer).

(i) *Certain limitations do not apply to rollover contributions.* The limitations on distributions in paragraphs (b) through (d) of this section do not apply to amounts held in a separate account for eligible rollover distributions as described in § 1.403(b)–10(d).

§ 1.403(b)–7 Taxation of distributions and benefits.

(a) *General rules for when amounts are included in gross income.* Except as provided in this section (or in § 1.403(b)–10(c) relating to payments pursuant to a qualified domestic relations order), amounts actually distributed from a section 403(b) contract are includible in the gross income of the recipient participant or beneficiary (in the year in which so distributed) under section 72 (relating to annuities). For an additional income tax that may apply to certain early distributions that are includible in gross income, see section 72(t).

(b) *Rollovers to individual retirement arrangements and other eligible retirement plans*—(1) *Timing of taxation of rollovers.* In accordance with sections 402(c), 403(b)(8), and 403(b)(10), a direct transfer in accordance with section 401(a)(31) (generally referred to as a direct rollover) is not includible in the gross income of a participant or beneficiary in the year transferred. In addition, any payment made in the form of an eligible rollover distribution (as defined in section 402(c)(4)) is not includible in gross income in the year paid to the extent the payment is transferred to an eligible retirement plan (as defined in section 402(c)(8)(B)) within 60 days, including the transfer to the eligible retirement plan of any property distributed. For this purpose, the rules of section 402(c)(2) through (7) and (c)(9) apply. Any direct rollover under this paragraph (b)(1) is a distribution that is subject to the distribution requirements of § 1.403(b)–6.

(2) *Requirement that contract provide rollover options for eligible rollover distributions.* As required in § 1.403(b)–3(a)(7), an annuity contract is not a section 403(b) contract unless the contract provides that if the distributee of an eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B)) and specifies the eligible retirement plan to which the distribution is to be paid, then the distribution will be paid to that eligible retirement plan in a direct rollover. For purposes of determining whether a contract satisfies this requirement, the provisions of section 401(a)(31) apply to the annuity as though it were a plan qualified under section 401(a) unless otherwise provided in section 401(a)(31). In applying the provisions of this paragraph (b)(2), the payor of the eligible rollover distribution from the contract is treated as the plan administrator.

(3) *Requirement that contract payor provide notice of rollover option to distributees.* To ensure that the distributee of an eligible rollover distribution from a section 403(b) contract has a meaningful right to elect a direct rollover, section 402(f) requires that the distributee be informed of the option. Thus, within a reasonable time period before making the initial eligible rollover distribution, the payor must provide an explanation to the distributee of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover. For purposes of satisfying the reasonable time period requirement, the plan timing rule provided in section 402(f)(1) and the regulations thereunder applies to section 403(b) contracts.

(4) *Mandatory withholding upon certain eligible rollover distributions from contracts.* If a distributee of an eligible rollover distribution from a section 403(b) contract does not elect to have the eligible rollover distribution paid directly to an eligible retirement plan in a direct rollover, the eligible rollover distribution is subject to 20-percent income tax withholding imposed under section 3405(c). See section 3405(c) and the regulations thereunder for provisions regarding the withholding requirements relating to eligible rollover distributions.

(5) *Automatic rollover for certain mandatory distributions under section 401(a)(31)(B).* [Reserved].

(c) *Special rules for certain corrective distributions.* See section 402(g)(2)(C) for special rules to determine the tax treatment of a distribution of excess deferrals, and see § 1.401(m)–1(e)(3)(v) for the tax treatment of corrective distributions of after-tax and matching contributions to comply with section 401(m).

(d) *Amounts taxable under section 72(p)(1).* In accordance with section 72(p), the amount of any loan from a section 403(b) contract to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is treated as having been received as a distribution from the contract under section 72(p)(1), except to the extent set forth in section 72(p)(2) (relating to loans that do not exceed a maximum amount and that are repayable in accordance with certain terms) and § 1.72(p)–1. Thus, except to the extent a loan satisfies section 72(p)(2), any amount loaned from a section 403(b) contract to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is includible in the gross income of the participant or beneficiary for the taxable year in which the loan is made. See generally § 1.72(p)–1.

§ 1.403(b)–8 Funding.

(a) *Investments permitted.* Section 403(b) and § 1.403(b)–3 only apply to amounts held in an annuity contract (as defined in § 1.403(b)–2), including a custodial account that is treated as an annuity contract under this section or a retirement income account that is treated as an annuity contract under § 1.403(b)–9.

(b) *Contributions to the plan.* Contributions to a section 403(b) plan must be transferred to the insurance company issuing the annuity contract (or the entity holding assets of any custodial or retirement income account that is treated as an annuity contract) within a period that is not longer than is reasonable for the proper administration of the plan. For purposes of this requirement, the plan may provide for section 403(b) elective deferrals for a participant under the plan to be transferred to the annuity contract within a specified period after the date the amounts would otherwise have been paid to the participant. For example, the plan could provide for section 403(b) elective deferrals under the plan to be contributed within 15 business days following the month in which these amounts would otherwise have been paid to the participant.

(c) *Annuity contracts*—(1) *Generally.* As defined in § 1.403(b)–2, and except as otherwise permitted under this section, an annuity contract means a contract that is issued by an insurance company qualified to issue annuities in a State and that includes payment in the form of an annuity. This paragraph (c) sets forth additional rules regarding annuity contracts.

(2) *Certain insurance contracts.* Neither a life insurance contract, as defined in section 7702, an endowment contract, a health or accident insurance contract, nor a property, casualty, or liability insurance contract meets the definition of an annuity contract. See § 1.401(f)–4(e). Also see § 1.403(b)–11(d) for a transition rule.

(3) *Special rule for certain contracts.* This paragraph (c)(3) applies in the case of a contract issued under a State section 403(b) plan established on or before May 17, 1982, or for an employee who becomes covered for the first time under the plan after May 17, 1982, unless the Commissioner had before that date issued any written communication (either to the employer or financial institution) to the effect that the arrangement under which the contract was issued did not meet the requirements of section 403(b). The requirement that the contract be issued by an insurance company qualified to issue annuities in a State does not apply to that contract if one of the following two conditions is satisfied and that condition has been satisfied continuously since May 17, 1982—

(i) Benefits under the contract are provided from a separately funded retirement reserve that is subject to supervision of the State insurance department; or

(ii) Benefits under the contract are provided from a fund that is separate from the fund used to provide statutory benefits payable under a State retirement system and that is part of a State teachers retirement system to purchase benefits that are unrelated to the basic benefits provided under the retirement system, and the death benefit provided under the contract does not at any time exceed the larger of the reserve or the contribution made for the employee.

(d) *Custodial accounts*—(1) *Treatment as a section 403(b) contract.* Under section 403(b)(7), a custodial account is treated as an annuity contract for purposes of §§ 1.403(b)–1 through 1.403(b)–11. See section 403(b)(7)(B) for special rules regarding the tax treatment of custodial accounts and section 4973(c) for an excise tax that applies to excess contributions to a custodial account.

(2) *Custodial account defined.* A custodial account means a plan, or a separate account under a plan, in which an amount attributable to section 403(b) contributions (or amounts rolled over to a section 403(b) contract, as described in § 1.403(b)–10(d)) is held by a bank or a person who satisfies the conditions in section 401(f)(2), if—

(i) All of the amounts held in the account are invested in stock of a regulated investment company (as defined in section 851(a) relating to mutual funds);

(ii) The requirements of § 1.403(b)–6(c) (imposing restrictions on distributions with respect to a custodial account) § 1.403(b)–6(d) are satisfied with respect to the amounts held in the account;

(iii) The assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries (for which purpose, assets are treated as diverted to the employer if the employer borrows assets from the account); and

(iv) The account is not part of a retirement income account.

(3) *Effect of definition.* The requirement in paragraph (d)(2)(i) of this section is not satisfied if the account includes any assets that other than stock of a regulated investment company.

(e) *Retirement income accounts.* See § 1.403(b)–9 for special rules under which a retirement income account for employees of a church-related organization is treated as a section 403(b) contract for purposes of §§ 1.403(b)–1 through 1.403(b)–11.

(f) *Combining assets.* To the extent permitted by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), trust assets held under a custodial account and trust assets held under a retirement income account, as described in § 1.403(b)–9(a)(6), may be invested in a group trust with trust assets held under a qualified plan or individual retirement plan. For this purpose, a trust includes a custodial account that is treated as a trust under section 401(f).

§ 1.403(b)–9 Special rules for church plans.

(a) *Retirement income accounts*—(1) *Treatment as a section 403(b) contract.* Under section 403(b)(9), a retirement income account for employees of a church-related organization (as defined in § 1.403(b)–2) is treated as an annuity contract for purposes of §§ 1.403(b)–1 through 1.403(b)–11.

(2) *Retirement income account defined*—(i) *In general.* A retirement income account means a defined contribution program established or maintained by a church-related organization under which—

(A) There is separate accounting for the retirement income account's interest in the underlying assets (*i.e.*, there must be sufficient separate accounting for it

to be possible at all times to determine the retirement income account's interest in the underlying assets and to distinguish that interest from any interest that is not part of the retirement income account);

(B) Investment performance is based on gains and losses on those assets; and

(C) The assets held in the account cannot be used for, or diverted to, purposes other than for the exclusive benefit of plan participants or their beneficiaries. For this purpose, assets are treated as diverted to the employer if the employer borrows assets from the account.

(ii) *Plan required.* A retirement income account must be maintained pursuant to a program which is a plan (as defined in § 1.403(b)–3(b)(3)) and the plan document must state (or otherwise evidence in a similarly clear manner) the intent to constitute a retirement income account.

(3) *Ownership or use constitutes distribution.* Any asset of a retirement income account that is owned or used by a participant or beneficiary is treated as having been distributed to that participant or beneficiary. *See* §§ 1.403(b)–6 and 1.403(b)–7 for rules relating to distributions.

(4) *Coordination of retirement income account with custodial account rules.* A retirement income account that is treated as an annuity contract is not a custodial account (defined in § 1.403(b)–8(d)(2)), even if it is invested solely in stock of a regulated investment company.

(5) *Life annuities.* A retirement income account may distribute benefits in a form that includes a life annuity only if—

(i) The amount of the distribution form has an actuarial present value, at the annuity starting date, equal to the participant's or beneficiary's accumulated benefit, based on reasonable actuarial assumptions, including regarding interest and mortality; and

(ii) The plan sponsor guarantees benefits in the event that a payment is due that exceeds the participant's or beneficiary's accumulated benefit.

(6) *Combining retirement income account assets with other assets.* For purposes of § 1.403(b)–8(f) relating to combining assets, retirement income account assets held in trust (including a custodial account that is treated as a trust under section 401(f)) are subject to the same rules regarding combining of assets as custodial account assets. In addition, retirement income account assets are permitted to be commingled in a common fund with amounts devoted exclusively to church purposes (such as a fund from which unfunded pension payments are made to former employees of the church). However, unless otherwise permitted by the Commissioner, no assets of the plan sponsor, other than retirement income account assets, may be combined with custodial account assets or any other assets permitted to be combined under § 1.403(b)–8(f). This paragraph (a)(6) is subject to any additional rules issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(*b*) of this chapter).

(7) *Trust treated as tax exempt.* A trust (including a custodial account that is treated as a trust under section 401(f)) that includes no assets other than assets of a retirement income account is treated as an organization that is exempt from taxation under section 501(a).

(b) *No compensation limitation up to $10,000. See* section 415(c)(7) for special rules regarding certain employer contributions not exceeding $10,000.

(c) *Special deduction rule for self-employed ministers.* See section 404(a)(10) for a special rule regarding the deductibility of a contribution made by a self-employed minister.

§ 1.403(b)–10 Miscellaneous provisions.

(a) *Plan terminations and frozen plans*—(1) *In general.* An employer may amend its section 403(b) plan to eliminate future contributions for existing participants. Alternatively, an employer may amend its section 403(b) plan to limit participation to existing participants and employees (to the extent consistent with § 1.403(b)–5). A section 403(b) plan may contain provisions that permit plan termination and permit accumulated benefits to be distributed on termination. However, in the case of a section 403(b) contract that is subject to the distribution restrictions in § 1.403(b)–6(c) or (d) (relating to custodial accounts and section 403(b) elective deferrals), termination of the plan and the distribution of accumulated benefits is permitted only if the employer (taking into account all entities that are treated as the employer under section 414 on the date of the termination) does not make contributions to an alternative section 403(b) contract that is not part of the plan. For purposes of this rule, contributions are made to an alternative section 403(b) contract if and only if contributions are made to a section 403(b) contract during the period beginning on the date of plan termination and ending 12 months after distribution of all assets from the terminated plan. However, if at all times during the period beginning 12 months before the termination and ending 12 months after distribution of all assets from the terminated plan, fewer than 2 percent of the employees who were eligible under the section 403(b) plan as of the date of plan termination are eligible under the alternative section 403(b) contract, the alternative section 403(b) contract is disregarded. In order for a section 403(b) plan to be considered terminated, all accumulated benefits under the plan must be distributed to all participants and beneficiaries as soon as administratively practicable after termination of the plan. A distribution includes delivery of a fully paid individual insurance annuity contract. The mere provision for, and making of, distributions to participants or beneficiaries upon plan termination does not cause a contract to cease to be a section 403(b) contract. See § 1.403(b)–7 for rules regarding the tax treatment of distributions.

(2) *Employers that cease to be eligible employers.* An employer that ceases to be an eligible employer may no longer contribute to a section 403(b) contract for any subsequent period, and the contract will fail to satisfy § 1.403(b)–3(a) if any further contributions are made with respect to a period after the employer ceases to be an eligible employer.

(b) *Contract exchanges and plan-to-plan transfers*—(1) *Contract exchanges and transfers*—(i) *General rule.* If the conditions in paragraph (b)(2) of this section are met, a section 403(b) contract held under a section 403(b) plan may be exchanged for another section 403(b) contract held under that section 403(b) plan. Further, if the conditions in paragraph (b)(3) of this section are met, a section 403(b) plan may provide for the transfer of its assets (*i.e.*, the section 403(b) contracts held thereunder, including any assets held in a custodial account or retirement income account that are treated as section 403(b) contracts) to another section 403(b) plan. In addition, if the conditions in paragraph (b)(4) of this section (relating to permissive service credit and repayments under section 415) are met, a section 403(b) plan may provide for the transfer of its assets to a qualified plan under section 401(a). However, neither a qualified plan nor an eligible plan under section 457(b) may transfer assets to a section 403(b) plan, and a section 403(b) plan may not accept such a transfer. In addition, a section 403(b) contract may not be exchanged for an annuity contract that is not a section 403(b) contract. Neither a plan-to-plan transfer nor a contract exchange permitted under this paragraph (b) is treated as a distribution

for purposes of the distribution restrictions at § 1.403(b)–6. Therefore, such a transfer or exchange may be made before severance from employment or another distribution event. Further, no amount is includible in gross income by reason of such a transfer or exchange.

(ii) *ERISA rules.* See § 1.414(l)–1 for other rules that are applicable to section 403(b) plans that are subject to section 208 of the Employee Retirement Income Security Act of 1974 (88 Stat. 829, 865).

(2) *Requirements for contract exchange within the same plan.* A section 403(b) contract of a participant or beneficiary may be exchanged under paragraph (b)(1) of this section for another section 403(b) contract of that participant or beneficiary under the same section 403(b) plan if the following conditions are met—

(i) The plan under which the contract is issued provides for the exchange;

(ii) The participant or beneficiary has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit of that participant or beneficiary immediately before the exchange (taking into account the accumulated benefit of that participant or beneficiary under both section 403(b) contracts immediately before the exchange); and

(iii) The other contract provides that, to the extent a contract that is exchanged is subject to any distribution restrictions under § 1.403(b)–6, the other contract imposes restrictions on distributions to the participant or beneficiary that are not less stringent than those imposed on the contract being exchanged.

(3) *Requirements for plan-to-plan transfers.* A plan-to-plan transfer under paragraph (b)(1) of this section from a section 403(b) plan to another section 403(b) plan is permitted if the following conditions are met—

(i) The participant or beneficiary whose assets are being transferred is an employee of the employer providing the receiving plan;

(ii) The transferor plan provides for transfers;

(iii) The receiving plan provides for the receipt of transfers;

(iv) The participant or beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that participant or beneficiary immediately before the transfer.

(v) The receiving plan provides that, to the extent any amount transferred is subject to any distribution restrictions under § 1.403(b)–6, the receiving plan imposes restrictions on distributions to the participant or beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan.

(vi) If a plan-to-plan transfer does not constitute a complete transfer of the participant's or beneficiary's interest in the section 403(b) plan, the transferee plan treats the amount transferred as a continuation of a pro rata portion of the participant's or beneficiary's interest in the section 403(b) plan (*e.g.*, a pro rata portion of the participant's or beneficiary's interest in any after-tax employee contributions).

(4) *Purchase of permissive service credit by contract-to-plan transfers from a section 403(b) contract to a qualified plan*—(i) *General rule.* If the conditions in paragraph (b)(4)(ii) of this section are met, a section 403(b) plan may provide for the transfer of assets held thereunder to a qualified defined benefit governmental plan (as defined in section 414(d)).

(ii) *Conditions for plan-to-plan transfers.* A transfer may be made under this paragraph (b)(4) only if the transfer is either—

(A) For the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under the receiving defined benefit governmental plan; or

(B) A repayment to which section 415 does not apply by reason of section 415(k)(3).

(c) *Qualified domestic relations orders.* In accordance with the second sentence of section 414(p)(9), any distribution from an annuity contract under section 403(b) (including a distribution from a custodial account or retirement income account that, under section 403(b)(7) or (9), is treated as a section 403(b) contract) pursuant to a qualified domestic relations order is treated in the same manner as a distribution from a plan to which section 401(a)(13) applies. Thus, for example, a section 403(b) plan does not fail to satisfy the distribution restrictions set forth in § 1.403(b)–6(b), (c), or (d) merely as a result of distribution made pursuant to a qualified domestic relations order under section 414(p), so that such a distribution is permitted without regard to whether the employee from whose contract the distribution is made has had a severance from employment or other event permitting a distribution to be made under section 403(b).

(d) *Rollovers to a section 403(b) contract.* A section 403(b) contract may accept contributions that are eligible rollover distributions (as defined in section 402(c)(4)) made from another eligible retirement plan (as defined in section 402(c)(8)(B)).

Amounts contributed to a section 403(b) contract as eligible rollover distributions are not taken into account for purposes of the limits in § 1.403(b)–4, but, except as otherwise specifically provided (for example, at § 1.403(b)–6(i)), are otherwise treated in the same manner as amounts held under a section 403(b) contract for purposes of §§ 1.403(b)–3 through 1.403(b)–9 and this section.

(e) *Deemed IRAs.* See regulations under section 408(q) for special rules relating to deemed IRAs.

(f) *Defined benefit plans*—(1) *TEFRA church defined benefit plans.* See section 251(e)(5) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, for a provision permitting certain arrangements established by a church-related organization and in effect on September 3, 1982 (a TEFRA church defined benefit plan) to be treated as section 403(b) contract even though it is a defined benefit arrangement. In accordance with section 403(b)(1), for purposes of applying section 415 to a TEFRA church defined benefit plan, the accruals under the plan are limited to the maximum amount permitted under section 415(c) when expressed as an annual addition, and, for this purpose, the rules at § 1.402(b)–1(a)(2) for determining the present value of an accrual under a nonqualified defined benefit plan also apply for purposes of converting the accrual under a TEFRA church defined benefit plan to an annual addition. See section 415(b) for additional limits for TEFRA church defined benefit plans.

(2) *Other defined benefit plans.* Except for a TEFRA church defined benefit plan, section 403(b) does not apply to any contributions or accrual under a defined benefit plan.

(g) *Other rules relating to section 501(c)(3) organizations.* See section 501(c)(3) and regulations thereunder for the substantive standards for tax-exemption under that section, including the requirement that no part of the organization's net earnings inure to the benefit of any private shareholder or individual. See also sections 4941 (self dealing), 4945 (taxable expenditures), and 4958 (excess benefit transactions), and the regulations thereunder, for rules relating to excise taxes imposed on certain transactions involving organizations described in section 501(c)(3).

§ 1.403(b)–11 Effective dates.

(a) Except as otherwise provided in this section, §§ 1.403(b)–1 through 1.403(b)–10 apply for taxable years beginning after December 31, 2005.

(b) In the case of a section 403(b) contract maintained pursuant to a collective bargaining agreement that is ratified and in effect on the date of publication of final regulations in the **Federal Register**, §§ 1.403(b)–1 through 1.403(b)–10 do not apply before the date on which the collective bargaining agreement terminates (determined without regard to any extension thereof after the date of publication of final regulations in the **Federal Register**).

(c) In the case of a section 403(b) contract maintained by a church-related organization for which the authority to amend the contract is held by a church convention (within the meaning of section 414(e)), §§ 1.403(b)–1 through 1.403(b)–10 do not apply before the earlier of—

(1) January 1, 2007; or

(2) 60 days following the earliest church convention that occurs after the date of publication of final regulations in the **Federal Register**.

(d) Section 1.403(b)–8(c)(2) does not apply to a contract issued before February 14, 2005.

Par. 6. Section 1.414(c)–5 is redesignated as § 1.414(c)–6 and new § 1.414(c)–5 is added to read as follows:

§ 1.414(c)–5 Certain tax-exempt organizations.

(a) *Application.* This section applies to an organization that is exempt from tax under section 501(a). The rules of this section are in addition to the rules otherwise applicable under section 414(b) and 414(c). Except to the extent set forth in paragraphs (d), (e), and (f) of this section, this section does not apply to any church, as defined in section 3121(w)(3)(A), or any qualified church-controlled organization, as defined in section 3121(w)(3)(B).

(b) *General rule.* In the case of an organization that is exempt from tax under section 501(a) (an exempt organization) whose employees participate in a plan, the employer with respect to that plan includes the exempt organization and any other organization that is under common control with the exempt organization whose employees participate in the plan. For this purpose, common control exists between exempt organizations if at least 80 percent of the directors or trustees of one organization are either representatives of, or directly or indirectly controlled by, the other organization. A trustee or director is treated as a representative of another exempt organization if he or she also is a trustee, director, agent, or employee of the other exempt organization. Existence of control is determined based on the facts and circumstances. A trustee or director is controlled by another organization if the other organization has the power to remove such trustee or director and designate a new trustee or director. For example, if exempt organization A appoints at least 80 percent of the trustees of exempt organization B (which is the owner of the outstanding shares of corporation C, which is not an exempt organization) and has the power to control at least 80 percent of the directors of exempt organization D, then, under this paragraph (b) and § 1.414(b)–1, entities A, B, C, and D are treated as the same employer with respect to any plan maintained by A, B, C, or D for purposes of the sections referenced in sections 414(b), 414(c), and 414(t).

(c) *Permissive aggregation with entities having a common exempt purpose.* For purposes of this section, exempt organizations that maintain a single plan covering one or more employees from each organization may treat themselves as under common control for purposes of section 414(c) if each of the organizations regularly coordinate their day-to-day exempt activities. For example, an entity that provides a type of emergency relief within one geographic region and another exempt organization that provides that type of emergency relief within another geographic region may treat themselves as under common control if they have a single plan covering employees of both entities and regularly coordinate their day-to-day exempt activities. Similarly, a hospital that is an exempt organization and another exempt organization with which it coordinates the delivery of medical services or medical research may treat themselves as under common control if there is a single plan covering employees of the hospital and employees of the other exempt organization and the coordination is a regular part of their day-to-day exempt activities.

(d) *Permissive disaggregation between qualified church controlled organizations and other entities.* In the case of a church plan (as defined in section 414(e)) to which contributions are made by more than one common law entity, any employer may apply paragraphs (b) and (c) of this section to those entities that are not a church (as defined in section 403(b)(12)(B) and § 1.403(b)–2) separately from those entities that are churches. For example, in the case of a group of entities consisting of a church (as defined in section 3121(w)(3)(A)), a secondary school (that is treated as a church under § 1.403(b)–2), and a nursing home that receives more than 25 percent of its support from fees paid by residents (so that it is not treated as a qualified church-controlled organization under § 1.403(b)–2 and section 3121(w)(3)(B)), the nursing home may treat itself as not being under common control with the church and the school, even though under the nursing home may be under common control with the school and the church under paragraph (b) of this section.

(e) *Application to certain church entities.* [Reserved].

(f) *Anti-abuse rule.* In any case in which the Commissioner determines that the structure of one or more exempt organizations (including an exempt organization and an entity that is not exempt from income tax) or the positions taken by those organizations has the effect of avoiding or evading § 1.403(b)–5(a) or another requirement imposed under section 401(a), 403(b), or 457(b), or any applicable section (as defined in section 414(t)), the Commissioner may treat an entity as under common control with the exempt organization.

(g) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Organization A is a tax-exempt organization under section 501(c)(3) which owns 80% or more of the total value of all classes of stock of corporation B, which is a for profit organization.

(ii) *Conclusion.* Under paragraph (a) of this section, this section does not alter the rules of section 414(b) and (c), so that organization A and corporation B are under common control under § 1.414(c)–2(b).

Example 2. (i) *Facts.* Organization M is a hospital which is a tax-exempt organization under section 501(c)(3) and organization N is a medical clinic which is also a tax-exempt organization under section 501(c)(3). N is located in a city and M is located in a nearby suburb. There is a history of regular coordination of day-to-day activities between M and N, including periodic transfers of staff, coordination of staff training, common sources of income, and coordination of budget and operational goals. A single section 403(b) plan covers professional and staff employees of both the hospital and the medical clinic. While a number of members of the board of directors of M are also on the board of directors of N, there is less than 80% overlap in board membership. Both organizations have approximately the same percentage of employees who are highly compensated and have appropriate business reasons for being maintained in separate entities.

(ii) *Conclusion.* M and N are not under common control under this section, but, under paragraph (c) of this section, may choose to treat themselves as under common control, assuming both of them act in a manner that is consistent with that choice for purposes of § 1.403(b)–5(a), sections 401(a), 403(b), and 457(b), and any other applicable section (as defined in section 414(t)).

(h) *Effective date.* This section applies for taxable years beginning after December 31, 2005.

PART 31—EMPLOYMENT TAXES

Par. 7. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 8. Section 31.3121(a)(5)–2 is added to read as follows:

§ 31.3121(a)(5)–2 Payments under or to an annuity contract described in section 403(b).

[The text of proposed § 31.3121(a)(5)–2 is the same as the text of § 31.3121(a)(5)–2T published elsewhere in this issue of the **Federal Register**].

Nancy Jardini,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–25237 Filed 11–15–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 309–0468b; FRL–7834–4]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern the emission of particulate matter (PM–10) and sulfur compounds into the atmosphere from industrial processes. We are proposing to approve local rules that administer regulations and regulate emission sources under the Clean Air Act as amended (CAA or the Act).

DATES: Any comments on this proposal must arrive by December 16, 2004.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect a copy of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118 or *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: ICAPCD Rules 403 and 405. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 13, 2004.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 04–25301 Filed 11–15–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 041029298–4298–01; I.D. 052004A]

RIN 0648–AS38

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Coastal Dungeness Crab and Pink Shrimp; Industry Fee System for Fishing Capacity Reduction Loan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes regulations to implement an industry fee system for repaying a $35,662,471 Federal loan partially financing a fishing capacity reduction program in the Pacific Coast groundfish fishery. The fee system involves future landings in the trawl portion (excluding whiting catcher - processors) of the Pacific Coast groundfish fishery as well as the California, Washington, and Oregon fisheries for coastal Dungeness crab and pink shrimp. This action's intent is to implement the fee system.

DATES: Comments on this proposed rule must be received by December 16, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *0648–AS38@noaa.gov*. Include in the subject line the following identifier: Pacific Coast Groundfish Buyback RIN 0648–AS38. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Federal e-Rulemaking Portal: *http:www.regulations.gov*.
- Mail: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.
- Fax: (301) 713–1306.

Comments involving the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted in writing to Michael L. Grable, at the above address, and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David__Rostker@omb.eop.gov* or by fax to 202–395–7285.

Copies of the Environmental Assessment, Regulatory Impact Review

(EA/RIR) and Initial Regulatory Flexibility Analysis (IRFA) for the program may be obtained from Michael L. Grable, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 312(b)-(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) (the Act) generally authorized fishing capacity reduction programs (programs). In particular, section 312(d) of the Act (section 312(d)) authorized industry fee systems (fee systems) for repaying fishing capacity reduction loans (reduction loans) which finance program costs.

Subpart L of 50 CFR part 600 contains the framework regulations (framework regulations) generally implementing section 312(b)-(e) of the Act.

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorized reduction loans.

Section 212 of Division B, Title II, of Public Law 108–7 (section 212) specifically authorized a $46 million program (groundfish program) for that portion of the limited entry trawl fishery under the Pacific Coast Groundfish Fishery Management Plan whose permits, excluding those registered to whiting catcher-processors, were endorsed for trawl gear operation (reduction fishery). Section 212 also authorized a fee system for repaying the reduction loan partially financing the groundfish program's cost. The fee system includes both the reduction fishery and the fisheries for California, Washington, and Oregon coastal Dungeness crab and pink shrimp (fee share fisheries).

Section 501(c) of Division N, Title V, of Public Law 108–7 (section 501(c)) appropriated $10 million to partially fund the groundfish program's cost.

Public Law 107–206 authorized a $36 million reduction loan financing up to $36 million of the groundfish program's cost.

Section 212 required NMFS to implement the groundfish program by a public notice in the **Federal Register**. NMFS published the groundfish program's initial public notice on May 28, 2003 (68 FR 31653) and final notice on July 18, 2003 (68 FR 42613). Anyone interested in the groundfish program's full implementation details should refer to these two notifications.

The groundfish program's maximum cost was $46 million, consisting of a $10 million appropriation and a $36 million reduction loan. Voluntary participants in the groundfish program relinquished, among other things, their fishing permits and licenses in the reduction fishery and the fee share fisheries, their fish catch histories in these fisheries, and their vessels' worldwide fishing privileges in return for a reduction payment whose amount the participant's bid determined.

On July 18, 2003, NMFS invited groundfish program bids from the reduction fishery's permit holders. The bidding period opened on August 4, 2003, and closed on August 29, 2003. NMFS scored each bid's amount against the bidder's past ex-vessel revenues and, in a reverse auction, accepted the bids whose amounts were the lowest percentages of the revenues. This created reduction contracts whose performance was subject only to a successful referendum about the fee system required to repay the reduction loan.

Bid offers totaled $59,786,471. NMFS accepted bids totaling $45,662,471. The next lowest scoring bid would have exceeded the groundfish program's maximum cost. The accepted bids involved 91 fishing vessels as well as 239 fishing permits (91 in the reduction fishery, 121 in the fee-share fisheries, and 27 other Federal permits).

In accordance with the section 212 formula, NMFS allocated portions of the prospective $35,662,471 reduction loan to the reduction fishery and each of the six fee share fisheries, as follows:

(1) Reduction fishery, $28,428,719; and

(2) Fee share fisheries:

(a) California Dungeness crab, $2,334,334,

(b) California pink shrimp, $674,202,

(c) Oregon Dungeness crab, $1,367,545,

(d) Oregon pink shrimp, $2,228,845,

(e) Washington Dungeness crab, $369,426, and

(f) Washington pink shrimp, $259,400.

NMFS next held a referendum about the fee system. The reduction contracts would have become void unless the majority of votes cast in the referendum approved the fee system. On September 30, 2003, NMFS mailed ballots to referendum voters in the reduction fishery and the six fee share fisheries. The voting period opened on October 15, 2003, and closed on October 29, 2003. NMFS received 1,105 responsive votes. In accordance with the section 212 formula, NMFS weighted the votes from each of the seven fisheries. Over 85% of the weighted votes approved the fee system. This successful referendum result removed the only condition precedent to reduction contract performance.

On November 4, 2003, NMFS published another **Federal Register** document (68 FR 62435) advising the public that NMFS would, beginning on December 4, 2003, tender the groundfish program's reduction payments to the 91 accepted bidders. On December 4, 2003, NMFS required all accepted bidders to permanently stop all further fishing with the reduction vessels and permits. Subsequently, NMFS:

(1) Disbursed $45,662,471 in reduction payments to 91 accepted bidders;

(2) Revoked the relinquished Federal permits;

(3) Advised California, Oregon, and Washington about the relinquished state permits;

(4) Arranged with the National Vessel Documentation Center for revocation of the reduction vessels' fishery trade endorsements; and

(5) Notified the U.S. Maritime Administration to restrict placement of the reduction vessels under foreign registry or their operation under the authority of foreign countries.

Section 501(c) also requires the groundfish program, among other things, to ensure ''that the owners of * * * [groundfish program reduction vessels] will operate only under the United States flag or be scrapped as a reduction vessel pursuant to section 600.1011(c) of title 50, Code of Federal Regulations.''

II. Present Status

NMFS has completed the groundfish program except for implementing the fee system and providing for certain aspects of the reduction vessels' post-reduction operation. This action proposes to implement the groundfish program's fee system. A later action will separately propose regulations providing for certain aspects of the reduction vessel's post-reduction operation and such other groundfish program matters as may require regulation.

Sections 600.1013 of the framework regulations govern the payment and collection of fees under a fee system.

Basically, the first ex-vessel buyers (fish buyers) of post-reduction fish subject to a fee system (fee fish) must withhold the fee from the trip proceeds which the fish buyers would otherwise have paid to the parties who harvested and first sold (fish sellers) the fee fish to the fish buyers. Fish buyers calculate the fee to be collected by multiplying the applicable fee rate times the fee fish's full delivery value. Delivery value is the fee fish's full fair market value,

including all in-kind compensation or other goods or services exchanged in lieu of cash.

Fish buyers collect the fee when they withhold it from trip proceeds, and fish sellers pay the fee when the fish buyers withhold it. Fee payment and fee collection is mandatory, and there are substantial penalties for failing to pay and collect fees in accordance with the applicable regulations.

Section 600.1014 governs fish buyers' depositing and disbursing collected fees as well as their keeping records of, and reporting about, collected fees.

Basically, fish buyers must, no less frequently than at the end of each business week, deposit collected fees in segregated and Federally insured accounts until, no less frequently than on the last business day of each month, they disburse all collected fees in the accounts to a lockbox which NMFS specifies for this purpose. Settlement sheets must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least three years and submit to NMFS annual reports of fee collection and disbursement activities.

All parties interested in this proposed action should carefully read the following sections of the framework regulations, whose detailed provisions this action proposes to apply to the groundfish program's reduction loan and the fee system for repaying the reduction loan:

(1) Section 600.1012;
(2) Section 600.1013;
(3) Section 600.1014;
(4) Section 600.1015;
(3) Section 600.1016; and
(4) Applicable portions of Section 600.1017.

Section 212 provided an option for NMFS to enter into agreements with California, Washington, and Oregon regarding groundfish program fees in the fee share fisheries. While this would not have involved actual fee collection (because both section 312(d) and the framework regulations require fish buyers to collect the fee), it would have allowed fish buyers to use existing state systems for post-collection fee administration.

After all three states enacted legislation which would allow them to function in this capacity, NMFS evaluated the feasibility of exercising the section 212 option. NMFS concluded, however, that the option was not feasible because, among other reasons:

(1) The state systems sometimes:
(a) Assess and collect fees based on pounds rather than on dollars,
(b) Neither assess nor collect fees at the point of fish sale, and/or
(c) Involve quarterly fee disbursements;
(2) One state's legislation regarding this option authorizes participation of a state agency different from the one administering the existing state system (and might require amendment);
(3) One state's legislation regarding the section 212 option expires in less than two years;
(4) All states indicated that funding and staffing, under the section 212 option, for the reduction loan's 30–year term would be problematic; and
(5) The states' collection systems are dissimilar and, without significant modification, might not promote efficient and uniform groundfish program fee collection.

Accordingly, NMFS decided that the section 212 option was not feasible at this time.

NMFS intends to enter into landing and permit data sharing agreements with the states in order for NMFS to receive landing and permit information that will allow it to ensure full groundfish program fee payment, collection, and disbursement under the framework rule provisions.

NMFS proposes, in accordance with section 600.1013(d) of the framework regulations, to establish the initial fee applicable to the reduction fishery and to each fee share fishery by **Federal Register** notification and by separate mailed notification to each fish seller and fish buyer affected of whom NMFS then has notice. This notification will not occur until after NMFS has adopted a final rule following its review of public comment about this proposed rule. Until such notification actually occurs, fish sellers and fish buyers should neither pay nor collect the groundfish program fee. Prospectively, however, the initial fee rates would be:

(1) Reduction fishery, 5%; and
(2) Fee share fisheries:
(a) California Dungeness crab, 1.24%,
(b) California pink shrimp, 4.24%,
(c) Oregon Dungeness crab, 0.55%,
(d) Oregon pink shrimp, 2.33%,
(e) Washington Dungeness crab, 0.16%, and
(f) Washington pink shrimp, 1.50%.

The $35,662,471 principal amount of the reduction loan began accruing interest on March 1, 2004 at a fixed interest rate of 6.97%.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an EA for the final notice implementing the groundfish program. The EA discusses the impact of the groundfish program on the natural and human environment and resulted in a finding of no significant impact. The EA considered the implementation of this fee collection system, among other alternatives. Therefore this proposed action has earned a categorical exclusion from additional analysis. NMFS will send the EA to anyone who requests it (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. NMFS prepared an RIR for the final notice implementing the groundfish program. NMFS will send the RIR to anyone who requests it (see **ADDRESSES**).

NMFS prepared an IRFA as required by Section 603 of the Regulatory Flexibility Act. The IRFA, describes the impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows. NMFS will send a complete copy to anyone who requests it (see ADDRESSES).

Description of Reasons for Action and Statement of Objective and Legal Basis: Section 212 of division B, Title II, of Public Law 108–7 (section 212) specifically authorized a $46 million fishing capacity reduction program for that portion of the limited entry trawl fishery under the Pacific coast Groundfish Fishery Management Plan whose permits, excluding those registered to whiting catcher-processors, were endorsed for trawl gear operation (reduction fishery). Section 212 also authorized a fee system for repaying the reduction loan partially financing the groundfish program's cost. The fee system includes both the reduction fishery and the fisheries for California, Washington, and Oregon coastal Dungeness crab and pink shrimp (fee share fisheries).

Section 501(b) of Division N, Title V, of Public Law 108–7 (section 501(b)) appropriated $10 million to partially fund the groundfish program's cost. Public Law 107–206 authorized a $36 million reduction loan financing up to $36 million of the groundfish program's cost. Pursuant to section 212, NMFS implemented the groundfish program by initial public notice on May 28, 2003 (68 FR 31653) and final notice on July 18, 2003 (68 FR 42613).

NMFS has completed the groundfish program except for implementing the fee system and providing for certain aspects of the reduction vessels' post-reduction operation. This action

proposes to implement the groundfish program's fee system.

Description of Small Entities to Which the Rule Applies: The Small Business Administration (SBA) has defined all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of $3.5 million or less as small entities. In addition, processors with 500 or fewer employees, involved in related industries such as canned and cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. According to the SBA's definition of a small entity, virtually all of the approximate 1,800 catcher vessels are considered small entities. This includes the remaining 172 groundfish trawl permits and over 1,600 fee share permits.

Description of Recordkeeping and Compliance Costs: Please see collection-of-information requirements listed below.

Duplication or Conflict with Other Federal Rules: This rule does not duplicate or conflict with any Federal rules.

Description of Significant Alternatives Considered: Three alternatives have been considered: (1) Status Quo (no fee system); (2) Statutorily Mandated Reduction Program with Fee Collection; and (3) Statutorily Mandated Reduction Program with Fee Collection Cooperation by States.

Status Quo (Alternative 1): Under the status quo, vessel profitability would not be affected. The status quo represents a significant alternative compared to the proposed action because it minimizes impacts on post reduction fishermen because they do not pay fees on landings, however, this alternative was not chosen because it is contrary to Pub. Law 107–206.

Statutorily Mandated Reduction Program with Fee Collection (Alternative 2): Under Alternative 2, the preferred alternative, the first ex-vessel buyers (fish buyers) of post-reduction fish subject to a fee system (fee fish) would withhold the fee from the trip proceeds which the fish buyers would otherwise have paid to the parties who harvested and first sold (fish sellers) the fee fish to the fish buyers. Fish buyers calculate the fee to be collected by multiplying the applicable fee rate times the fee fish's full delivery value. Delivery value is the fee fish's full fair market value, including all in-kind compensation or other goods or services exchanged in lieu of cash. This is the preferred alternative because it is mandated by Pub. Law 107–206.

Statutorily Mandated Reduction Program with Fee Collection Cooperation by States (Alternative 3): Like Alternative 2, Alternative 3 would have an adverse effect on vessel profitability; though the extent of that adverse effect it is not yet clear. Alternative 3 would leave the design of the fee collection system to the individual states. This alternative was not chosen because such state systems would:

(a) Assess and collect fees based on pounds rather than on dollars,

(b) Neither assess nor collect fees at the point of fish sale, and

(c) Involve quarterly fee disbursements.

In addition, one state's legislation regarding fee collection authorizes participation of a state agency different from the one administering the existing state system. Another state's fee collection legislation expires in less than two years. Furthermore, all states indicated that funding and staffing for the reduction loan's 30–year term would be problematic. Finally, the states' collection systems are dissimilar and, without significant modification, might not promote efficient and uniform groundfish program fee collection.

Steps the Agency Has Taken to Mitigate Negative Effects of the Action: With the lack of available cost data, increases in revenues may serve as a proxy for increased profitability. Further, in light of available revenue data, and assuming that each individual vessel shares in the increased revenues resulting from the groundfish program, the comparison of the relative effects of the program versus the effects of the fees show that overall economic benefits of the program would still be greater than the relative fees charged under this rule. NMFS is not aware of any other measures that could reduce the impact on small entities and still meet statutory requirements. However, NMFS welcomes comments that relay such ideas.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB has approved these information collections under OMB control number 0648–0376. NMFS estimates that the public reporting burden for these requirements will average:

(1) 2 hours for submitting a monthly fish buyer settlement sheet;

(2) 4 hours for submitting an annual fish buyer report; and

(3) 2 hours for making a fish buyer/fish seller report when one party fails to either pay or collect the fee.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the requirements of the PRA unless that information collection displays a currently valid OMB control number.

NMFS has determined that this proposed rule will not significantly affect the coastal zone of any state with an approved coastal zone management program. This determination has been submitted for review by the States of Washington, Oregon, and California.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs business, Reporting and recordkeeping requirements.

Dated: November 9, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 is revised to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, section 205 of Pub. L. 107–117, Pub. L. 107–206, and Pub. L. 108–7.

2. Section 600.1102 is added to subpart M to read as follows:

§ 600.1102 Pacific groundfish fishing capacity reduction fee collection system.

(a) *Purpose.* This section's purpose is to implement an industry fee system to repay the reduction loan partially financing the Pacific Coast groundfish fishery fishing capacity reduction program authorized by section 212 of Division B, Title II, of Pub. L. 108–7 and implemented by a final notification on July 18, 2003, in the **Federal Register** (68 FR 42613).

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of Subpart L of this Part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Borrower means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery, in any or all of the fee share fisheries, or in both the reduction fishery and any or all of the fee share fisheries.

Fee fish means all fish harvested from the reduction fishery during the period in which any portion of the reduction fishery's subamount is outstanding and all fish harvested from each of the fee share fisheries during the period in which any portion of each fee share fishery's subamount is outstanding.

Fee share fisheries means the California, Washington, and Oregon fisheries for coastal Dungeness crab and pink shrimp.

Reduction fishery means all species in, and that portion of, the limited entry trawl fishery under the Federal Pacific Coast Groundfish Fishery Management Plan that is conducted under permits, excluding those registered to whiting catcher-processors, which are endorsed for trawl gear operation.

Subamount means each portion of the reduction loan's original principal amount which is allocated to the reduction fishery and to each of the fee share fisheries.

(c) *Reduction loan amount.* The reduction loan's original principal amount is $35,662,471.

(d) *Subamounts.* The subamounts are:

(1) Reduction fishery, $28,428,719; and

(2) Fee share fisheries:

(i) California Dungeness crab, $2,334,334,

(ii) California pink shrimp, $674,202,

(iii) Oregon Dungeness crab, $1,367,545,

(iv) Oregon pink shrimp, $2,228,845,

(v) Washington Dungeness crab, $369,426, and

(vi) Washington pink shrimp, $259,400.

(e) *Interest accrual inception.* Reduction loan interest began accruing on March 1, 2004.

(f) *Interest rate.* The reduction loan's interest rate shall be 6.97%.

(g) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term shall be 30 years from March 1, 2004, but each fee shall continue for as long as necessary to fully repay each subamount.

(h) *Reduction loan repayment.*

(1) The borrower shall repay the reduction loan in accordance with § 600.1012 of Subpart L of this Part;

(2) Fish sellers in the reduction fishery and in each of the fee share fisheries shall pay the fee applicable to each such fishery's subamount in accordance with § 600.1013 of Subpart L of this Part;

(3) Fish buyers in the reduction fishery and in each of the fee share fisheries shall collect the fee applicable to each such fishery in accordance with § 600.1013 of Subpart L of this Part;

(4) Fish buyers in the reduction fishery and in each of the fee share fisheries shall deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery in accordance with § 600.1004 of Subpart L of this Part; and

(5) The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through § 600.1017 of subpart L of this part.

[FR Doc. 04–25428 Filed 11–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 041104307–4307–01; I.D. 102904B]

RIN 0648–AS56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Seasonal Closure of Grammanik Bank

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement interim measures recommended by the Caribbean Fishery Management Council (Council). This proposed rule would prohibit fishing for or possessing any species of fish, except highly migratory species, within the Grammanik Bank closed area from February 1, 2005, through April 30, 2005. The intended effect of this proposed rule is to protect a yellowfin grouper spawning aggregation and to reduce overfishing.

DATES: Comments must be received no later than 5 p.m., eastern time, on December 1, 2004.

ADDRESSES: You may submit comments on the proposed rule by any of the following methods:

- E-mail: *0648–AS56.Proposed@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier 0648–AS56.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Michael Barnette, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.
- Fax: 727–570–5583, Attention: Michael Barnette.

Copies of documents supporting this action may be obtained by contacting the NMFS Southeast Regional Office at the above address.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–570–5794.

SUPPLEMENTARY INFORMATION: The reef fish fishery of Puerto Rico and of the U.S. Virgin Islands is managed under the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and of the U.S. Virgin Islands (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Grammanik Bank lies on the shelf edge approximately 7 miles (11.3 km) south of Water Island, St. Thomas, U.S. Virgin Islands. The actual coral bank extends 1.05 miles (1.69 km) along the shelf edge and is approximately 328 ft (100 m) wide at its widest point. Researchers at the University of the Virgin Islands have documented that yellowfin grouper aggregate to spawn on Grammanik Bank from February through April each year, with peak spawning occurring around the full moon in March.

Yellowfin grouper are a long-lived, slow-growing species and, therefore, have a higher susceptibility to overfishing. Based on the preferred stock status criteria alternatives contained in the Council's Draft Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean to Address Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act (SFA Amendment), yellowfin grouper would be considered to be undergoing overfishing, and the stock would be considered to be overfished.

Prior to 2000, the yellowfin grouper spawning aggregation appears to have been relatively unexploited. However, anecdotal information from fishermen indicates that significant quantities of

yellowfin grouper were harvested from Grammanik Bank during the spawning aggregations in recent years. Underwater visual censuses conducted by researchers at the University of the Virgin Islands in March 2002 and 2003 revealed only small numbers of yellowfin grouper (i.e., 50 to 60) present during the peak spawning period. Based on this apparent reduction in abundance, representatives of the University of the Virgin Islands and two environmental organizations recently expressed concern about the apparent increased fishing mortality on the yellowfin grouper spawning aggregation and recommended that emergency action be undertaken to protect yellowfin grouper during the peak spawning period. After considering all available information, including commercial landings data from the U.S. Virgin Islands that support the SFA Amendment's discussion of the overfished status of the yellowfin grouper stock, visual census data from researchers at the University of the Virgin Islands, and other relevant biological studies referenced in the supporting environmental assessment (EA), the Council, at its August 2004 meeting, requested NMFS to draft a rule that would implement interim measures to protect yellowfin grouper during the 2005 spawning season. Consistent with the Council's request, this proposed rule would implement interim measures to protect the yellowfin grouper spawning aggregation during the 2005 spawning season. Subsequent, long-term protection of the spawning aggregation would be addressed in measures contained in the SFA Amendment, which is currently under development and, if approved by NMFS, would be expected to be implemented in mid to late 2005.

Interim Measures to Protect Yellowfin Grouper

This proposed rule would prohibit fishing for or possession of any species of fish, other than a highly migratory species, within the Grammanik Bank closed area from February 1, 2005, through April 30, 2005. For the purposes of this rule, the term ''highly migratory species'' means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in appendix A to 50 CFR part 635); white marlin, blue marlin, sailfish, and longbill spearfish. The Grammanik Bank closed area encompasses an area approximately 2.5 nm (4.6 km) by 2.75 nm (5.1 km) and is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°12.40′	64°59.00′
B	18°10.00′	64°59.00′
C	18°10.00′	64°56.10′
D	18°12.40′	64°56.10′
A	18°12.40′	64°59.00′

Classification

At this time, NMFS has not determined that the interim measures that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an EA for the interim measures that this proposed rule would implement. The EA discusses the impact on the environment as a result of this rule. A copy of the EA is available from NMFS (see **ADDRESSES**).

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA, which is contained in the EA, describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The proposed rule is intended to protect an important spawning aggregation of yellowfin grouper, to help arrest the decline in the resource, and to support its recovery. The Magnuson-Stevens Act, as amended, provides the statutory basis for the rule.

The proposed rule is intended to implement, on an interim basis, an action currently included in the Draft SFA Amendment. The SFA Amendment is expected to be implemented prior to the 2006 fishing year. This proposed rule would be an interim action providing protection of an important yellowfin grouper spawning aggregation during the 2005 spawning season and would expire prior to the implementation of the SFA Amendment. No duplicate, overlapping or conflicting rules have been identified.

There are two general classes of small business entities that would be directly affected by the rule: commercial fishing vessels and for-hire fishing vessels. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, that is not dominant in its field of operation, and that has annual receipts up to $3.5 million per year. The revenue benchmark for a small business that engages in charter fishing is a firm with receipts up to $6.0 million.

There are an estimated 342 registered commercial fishing vessels in the U.S. Virgin Islands. The majority of participants are part-time fishermen. Total annual average dockside revenues from commercial fishing activity are estimated at $1.72 million, or an average of $5,000 per registered vessel. Given the average revenue estimates of the fleet, all commercial entities are determined to be small business entities. It cannot be precisely determined how many of the commercial vessels that operate in the U.S. Virgin Islands would be affected by the proposed rule, though the rule would apply to all commercial fishing vessels. NMFS assumes that indirect impacts would be incurred industry-wide, and that all the commercial fishing entities that would be affected by the rule are small entities.

An estimated 27 year-round charter fishing operations operate in the U.S. Virgin Islands, with an unknown number of seasonal operations. No information exists on the business profile of this fleet. However, the average gross revenue for charter vessels operating in Florida is estimated at $68,000, and ranges from $26,000 (South Carolina) to $82,000 (Alabama) for other areas in the southeastern U.S. No information exists to suggest that the revenue profile of charter vessels that operate in the U.S. Virgin Islands is substantially different from these estimates, so NMFS concludes that all charter vessels operating in the U.S. Virgin Islands are small business entities. It cannot be determined how many of the charter vessels that operate in the U.S. Virgin Islands would be affected by the proposed rule, though the rule would apply to all charter vessels. NMFS assumes that indirect effects would be incurred industry-wide, and that all the charter fishing entities that would be affected by the rule are small entities.

The rule does not impose any reporting or record keeping requirements.

Since the proposed rule would apply to all commercial and charter fishing entities and all entities operating in the fishery are assumed to be small entities,

the criterion of a substantial number of the small business entities will be met.

The outcome of ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The criterion for disproportionality is whether the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. All entities affected by the proposed rule are considered small entities so that the issue of disproportionality does not arise. The criterion regarding profitability is whether the regulations significantly reduce profit for a substantial number of small entities. No precise estimates of the profits of either the commercial fishing vessels or the charter vessels that are expected to be affected by the proposed rule are available. However, even though it is recognized that not all water habitat is equally productive, the proposed rule would affect only approximately 3 percent of the available water area in the less than 100–fathom (183–m) depth range and close the area to fishing for only 25 percent of the year. Thus, less than 1 percent of available fishing area and time would be affected. Although it is likely that harvests from this area during this time period may exceed 1 percent by a negligible amount for certain species or fishing operations, the proposed restriction is expected to be sufficiently small so as to not substantially affect the profits of a substantial number of small entities.

Including the no-action alternative, five alternatives were considered in addition to the proposed rule. The no-action alternative would not impose any closure in the target area, thereby allowing all current fishing practices. This would eliminate all short-term adverse impacts expected to result from the closure. However, spawning protection of yellowfin grouper would not be provided, thereby forgoing the benefits of rebuilding the stock, and the action would, therefore, not be consistent with the Council's intent. The remaining four alternatives differ in the geographic size and time duration of the closure. Alternative 3 would establish closure over a larger geographic area than the proposed rule, 17.5 nm^2 (60 km^2) vs. 6.88 nm^2 (28.60 km^2), but would not encompass the entire period during which yellowfin grouper are known to spawn, thereby potentially negating the purpose and effectiveness of the closure. However, potential benefits to coral habitats, to the extent they occur within the proposed boundaries, could be greater than those in Alternative 2. Alternatives 4 and 6 would only establish closure in a 1 nm^2 (3.4 km^2) area, an area insufficient to afford the necessary protection. Alternative 4 would additionally not encompass the full spawning period and may allow fishing pressure to significantly impact an aggregation that is still present in the latter half of April. Alternative 6 would encompass the entire spawning period, but would continue the closure longer than is believed necessary. Alternative 5 would encompass 5 nm^2 (17.2 km^2), smaller than that in Alternative 2 but possibly affording sufficient geographic scope. However, Alternative 5 would also extend the closure for an additional month, which is longer than necessary and would, therefore, impose unnecessary adverse impacts. In addition, potential benefits to coral habitats, to the extent they occur within the proposed boundaries, could be slightly less than those in Alternative 2. Among the alternatives, only the proposed alternative meets the geographic and temporal scope necessary to meet the management objectives.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 10, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.33, paragraph (a)(4) is added to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

(a) * * *

(4) *Grammanik Bank closed area.* (i) The Grammanik Bank closed area is bounded by rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	18°12.40′	64°59.00′
B	18°10.00′	64°59.00′
C	18°10.00′	64°56.10′
D	18°12.40′	64°56.10′
A	18°12.40′	64°59.00′

(ii) From February 1, 2005, through April 30, 2005, no person may fish for or possess any species of fish, except highly migratory species, within the Grammanik Bank closed area. For the purpose of paragraph (a)(4) of this section, fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Highly migratory species means bluefin, bigeye, yellowfin, albacore, and skipjack tunas; swordfish; sharks (listed in appendix A to 50 CFR part 635); white marlin, blue marlin, sailfish, and longbill spearfish.

* * * * *

[FR Doc. 04–25430 Filed 11–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 041105308–4308–01; I.D. 110304B]

RIN 0648–AS88

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Commercial Reef Fish Fishery of the Gulf of Mexico; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; control date for Gulf of Mexico grouper landings.

SUMMARY: This notice announces that the Gulf of Mexico Fishery Management Council (GMFMC) is considering the establishment of an individual fishing quota (IFQ) to control participation or effort in the commercial grouper fishery of the Gulf of Mexico. If an IFQ is established, the GMFMC is considering October 15, 2004, as a possible control date regarding the eligibility of catch histories in the commercial grouper fishery.

DATES: Comments must be submitted by December 16, 2004.

ADDRESSES: You may submit comments on this notice of control date by any of the following methods:

• E-mail: *0648–AS88.Proposed@noaa.gov*. Include in the subject line the following document identifier: 0648–AS88.Proposed.

• Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: Steve Branstetter, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

• Fax: 727–570–5583, Attention: Steve Branstetter.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: The commercial fishery for grouper in the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the GMFMC, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. A moratorium on the issuance of new commercial reef fish permits was established by Amendment 4 to the FMP in May 1992. The moratorium has been maintained since that time with the implementation of Amendments 9, 11, and 17, and is scheduled to expire on December 31, 2005. The GMFMC is currently finalizing Amendment 24 to the FMP that would again extend the moratorium.

The GMFMC anticipates that additional future action may be necessary to control effort in the Gulf of Mexico grouper fishery by further restricting the number of participants. The GMFMC has been advised by NMFS that the grouper resources of the Gulf EEZ are fully exploited, especially red grouper and the aggregate of deep-water groupers, and the fisheries currently operate under restrictive quotas. As such, the GMFMC is concerned that the current level of participation and effort in the grouper fishery of the Gulf of Mexico may not be maximizing the economic benefits that could be derived from the resource and that future increases in participation or effort could further reduce economic benefits. In anticipation of future action to establish an IFQ for the grouper fishery of the Gulf of Mexico, at its October 2004 meeting, the GMFMC approved a motion stating:

In order to discourage acceleration in the grouper fishery to develop a catch history, the Council records its intent to only use catch histories prior to October 15, 2004, when developing a grouper IFQ. The Council requests NOAA Fisheries to publish this as a control date.

Should the GMFMC take future action to further restrict participation in the fishery, it may use October 15, 2004, as a possible control date regarding the eligibility of catch histories. Implementation of any program to restrict access in the grouper fishery would require preparation of an amendment to the FMP and publication of a notice of availability of the amendment with a comment period, publication of a proposed rule with a public comment period, approval of the amendment, and issuance of a final implementing rule.

Consideration of a control date does not commit the GMFMC or NMFS to any particular management regime or criteria for eligibility in the commercial grouper fishery. The GMFMC may or may not make use of this control date as part of the qualifying criteria for participation in any future IFQ or other management program for the Gulf of Mexico grouper fishery. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. The GMFMC subsequently may choose a different control date or a management regime that does not make use of a control date. The GMFMC also may choose to take no further action to control entry or access to the fisheries, in which case the control date may be rescinded.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 10, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–25429 Filed 11–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 110904D]

RIN 0648–AS37

Fisheries of the Exclusive Economic Zone Off Alaska; Aleutian Islands Directed Pollock Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 82 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 82, if approved, would establish a framework for management of the Aleutian Islands subarea (AI) directed pollock fishery. This action is necessary to implement provisions of the Consolidated Appropriations Act of 2004 that require the directed pollock fishery in the AI to be allocated to the Aleut Corporation for economic development of Adak, Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, Consolidated Appropriations Act of 2004, and other applicable laws. Comments from the public are welcome.

DATES: Comments on Amendment 82 must be received by close of business on January 18, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

• Mail: P.O. Box 21668, Juneau, AK 99802;

• Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK;

• Fax: 907–586–7557; or

• E-mail: BSA82NOA–0648–AS37@noaa.gov. Include in the subject line the following document identifier: AI pollock NOA. E-mail comments, with or without attachments, are limited to 5 megabytes.

Copies of Amendment 82, the Environmental Assessment/Regulatory Impact Review (EA/RIR) for the amendment, and the 2000 and 2001 Biological Opinions on the groundfish fisheries may be obtained from the same address or from the Alaska Region NMFS website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

The Council adopted Amendment 82 in June 2004 and clarified it in October 2004. If approved by NMFS, this amendment would establish a framework for management of the AI

directed pollock fishery. The Consolidated Appropriations Act of 2004 (Public Law (Pub. L.) 108–199, Sec. 803) requires the AI directed pollock fishery to be allocated to the Aleut Corporation for economic development of Adak, Alaska. This action would establish the allocation of the directed pollock fishery to the Aleut Corporation and would specify the management provisions for this fishery.

Public Law 108–199 requires the Aleut Corporation's selection of participants in the AI directed pollock fishery and limits participation to American Fisheries Act (AFA, Pub. L. 105–277, Title II of Division C) qualified entities and vessels equal to or less than 60 feet (18.3 m) in length overall (LOA) with certain endorsements. Section 803(b) restricts the annual harvest of pollock in the AI directed pollock fishery by vessels equal to or less than 60 feet (18.3 m) LOA to less than 25 percent until 2009, and to less than 50 percent prior to 2013. These vessels must receive 50 percent of the directed pollock fishery allocation starting in 2013 and beyond. An FMP amendment and associated regulatory amendments are needed to implement these and other measures necessary to manage this fishery pursuant to provisions specified in Pub. L. 108–199.

Prior to Pub. L. 108–199, the AI directed pollock fishery was managed pursuant to the AFA. The AFA allocated the AI directed pollock fishery to specific harvesters and processors named in the AFA and specified in regulations at 50 CFR part 679. Public Law 108–199 allocates all of the AI directed pollock fishery to the Aleut Corporation. The implementation of Pub. L. 108–199 requires the amendment of AFA provisions in the FMP and in the regulations at 50 CFR part 679 to provide for the allocation of the AI directed pollock fishery to the Aleut Corporation and for the management of this fishery.

The management provisions of Amendment 82 include:

1. Allocation of the AI directed pollock fishery to the Aleut Corporation;
2. Harvest specifications provisions including limits on the size of the annual total allowable catch (TAC) of pollock, the seasonal apportionment of pollock TAC, the Council's policy on the methods of funding the AI directed pollock fishery within the 2 million metric ton (mt) maximum annual optimum yield for groundfish of the BSAI, and the Council's policy on reallocating unharvested amounts of the AI pollock allocation to the Bering Sea pollock allocation;
3. Fishery monitoring provisions including restrictions on having pollock from more than one area on a vessel at one time, observer and scale requirements, catch monitoring control plans for shoreside and stationary floating processors, and the Aleut Corporation's responsibilities for ensuring the harvest does not exceed the quotas;
4. Limitations on the pollock allocation to AFA qualified vessels and to vessels equal to or less than 60 feet (18.3 m) LOA until 2013, when at least 50 percent of the allocation must be to vessels equal to or less than 60 feet (18.3 m) LOA;
5. Reporting requirements; and
6. A new AI Chinook salmon prohibited species catch limit and revisions to Chinook salmon savings areas closure requirements.

Pollock is an important prey species for the endangered and threatened Steller sea lion populations. The Steller sea lion protection measures evaluated in the 2000 and 2001 Biological Opinions (see **ADDRESSES**) were considered in the development of the management provisions of Amendment 82. The protection measures for Steller sea lions include spatial and temporal dispersion of pollock harvest. The pollock fishing closure areas in the AI would remain unchanged under Amendment 82 to ensure spatial dispersion of fishing effort. To temporally disperse harvest of prey species, the Steller sea lion protection measures implemented in the BSAI apportion 40 percent of pollock harvest to the A season and 60 percent to the B season. Amendment 82 would continue to temporally disperse pollock harvest with no more than 40 percent of the acceptable biological catch (ABC) authorized to be harvested in the A season. The total harvest of pollock in the Bering Sea subarea, including any rollover of unharvested AI pollock, also would remain well below the ABC so that overall harvest would be in proportion to biomass and less likely to compete with Steller sea lions for prey. Both of these harvest provisions satisfy the intent of the Steller sea lion protection measures.

Public comments are being solicited on proposed Amendment 82 through January 18, 2005. A proposed rule that would implement Amendment 82 will be published in the **Federal Register** for public comment at a later date, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment in order to be considered in the approval/disapproval decision on the amendment. All comments received on the amendment by the end of the comment period, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received not just postmarked or otherwise transmitted by close of business on the last day of the comment period.

Dated: November 10, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–25431 Filed 11–15–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 220
Tuesday, November 16, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 5 of the 2004 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 18, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 763–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on adult well-being, school enrollment and financing, child support agreements, support for non-household members, adult and child functional limitations and disability, and employer provided health benefits. These supplemental questions are included with the core and are referred to as ''topical modules.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2004 Panel is currently scheduled for 4 years and will include 12 waves of interviewing, which began in February 2004. Approximately 62,000 households were selected for the 2004 Panel, of which, 46,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 97,650 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2004 SIPP Panel during FY 2005. The total annual burden for 2004 Panel SIPP interviews will be 146,475 hours in FY 2005.

The topical modules for the 2004 Panel Wave 5 collect information about:

- Employer Provided Health Benefits.
- School Enrollment and Financing.
- Functional Limitations and Disability—Adults and Children.
- Support for Non-Household Members.
- Child Support Agreements.
- Adult Well-being.

Wave 5 interviews will be conducted from June 2005 through September 2005.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews will require an additional 1,553 burden hours in FY 2005.

II. Method of Collection

During the 2004 Panel, respondents are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0905.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 97,650 people per wave.
Estimated Time Per Response: 30 minutes per person on average.
Estimated Total Annual Burden Hours: 148,028.
Estimated Total Annual Cost: The only cost to respondents is their time.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: November 9, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25369 Filed 11–15–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Retail Sales and Inventory Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 18, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Scott Scheleur, U.S. Census Bureau, Room 2626–FOB 3, Washington, DC 20233–6500, (301) 763–2713.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Current Retail Sales and Inventory Survey provides estimates of monthly retail sales, end-of-month merchandise inventories, and quarterly e-commerce sales of retailers in the United States by selected kinds of business. Also, it provides monthly sales of food service establishments. The Bureau of Economic Analysis (BEA) uses this information to prepare the National Income and Products Accounts and to benchmark the annual input-output tables. Statistics provided from the Current Retail Sales and Inventory Survey are used to calculate the gross domestic product (GDP).

Estimates produced from the Current Retail Sales and Inventory Survey are based on a probability sample. The sample design consists of one fixed panel where all cases are requested to report sales and/or inventories each month.

Listed below are the series of retail form numbers and a description of each form:

Series	Description
SM–44(00)S	Non Department Store/Sales Only/WO E-Commerce.
SM–44(00)SE	Non Department Store/Sales Only W E-Commerce.
SM–44(00)SS	Non Department Store/Sales Only/Screener.
SM–44(00)B	Non Department Store/Sales and Inventory/WO E-Comm.
SM–44(00)BE	Non Department Store/Sales and Inventory/W E-Comm.
SM–44(00)BS	Non Department Store/Sales and Inventory/Screener.
SM–44(00)L	Non Department Store/Sales and Inventory/LIFO/WO E-Comm.
SM–44(00)LE	Non Department Store/Sales and Inventory/LIFO/W E-Comm.
SM–44(00)LS	Non Department Store/Sales and Inventory/LIFO/Screener.
SM–45(00)S	Department Store/Sales Only/WO E-Commerce.
SM–45(00)SE	Department Store/Sales Only/W E-Commerce.
SM–45(00)SS	Department Store/Sales Only/Screener.
SM–45(00)B	Department Store/Sales and Inventory/WO E-Commerce.
SM–45(00)BE	Department Store/Sales and Inventory/W E-Commerce.
SM–45(00)BS	Department Store/Sales and Inventory/Screener.
SM–72(00)S	Food Services/Sales Only/WO E-Commerce.
SM–20(00)I ..	Non Department and Department Store/Inventory Only.
SM–20(00)L	Non Department and Department Store/Inventory Only/LIFO.

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0717.

Form Number: See above.

Type of Review: Regular submission.

Affected Public: Retail and food services firms in the United States.

Estimated Number of Respondents: 10,000.

Estimated Time Per Response: 7.8 minutes.

Estimated Total Annual Burden Hours: 16,000.

Estimated Total Annual Cost: The cost to the respondents for fiscal year 2005 is estimated to be $377,440 based on the median hourly salary of $23.59 for accountants and auditors. (Occupational Employment Statistics-Bureau of Labor Statistics May 2003 National Occupational Employment and Wage Estimates, $23.59 represents the median hourly wage of the full-time wage and salary earnings of accountants and auditors SOC code 13–2011.) *http://stats.bls.gov/oes/2003/may/oes_13Bu.htm.*

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 9, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25370 Filed 11–15–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2005 Census Survey of Maricopa County, AZ (CSMA)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 18, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ronald Dopkowski, (301) 763–3801, Census Bureau, Room 3356–3, Mail Stop 8400, Washington, DC 20233.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Maricopa Association of Governments (MAG) requested the U.S. Census Bureau to conduct the CSMA to provide estimates for September 1, 2005 for Maricopa County, 24 designated jurisdictions, 5 sub-areas for Phoenix, Arizona, 2 sub-areas for Mesa, Arizona, and the balance of county. The estimates are:

Total resident population;
Total resident population living in housing units;
Total resident population not living in housing units;
Total housing units; and
Total occupied housing units.

The MAG requested that we produce the above estimates by a survey of housing units and a 100 percent enumeration of the non-housing unit population. The MAG will use the estimates for revenue sharing purposes. The Arizona State Legislature enacted legislation that allows the use of survey estimates for revenue sharing.

The Census Bureau will not certify the estimates nor will we use the estimates in our official population estimates program.

The housing unit survey will produce the estimates for resident population in housing units, housing units, and occupied housing units. We will contact each identified group quarters and visit outdoor locations to obtain the resident population not living in housing units. We will sum the two resident populations to produce the total number of residents.

Each housing unit will be asked one to three questions to determine whether it was occupied on September 1, 2005. If it was occupied, we will ask for the total number of people living in the housing unit and for each person's name, age, and sex. Although we will ask for the names, age, and sex of each household member in order to provide a more accurate count of residents, we will not report this information to the Maricopa County Association of Governments. We will ask each group quarters for its number of residents on the day we contact it. We will count the number of people at each outdoor location on the day we visit it.

II. Method of Collection

We will use a combination of mail, computer-assisted telephone interviewing, and personal visit interviewing to collect the information for each housing unit. Enumerators will telephone or visit the group quarters to obtain the number of residents.

III. Data

OMB Number: None.

Form Number: CSMA–1, CSMA–1(PV), and SC–116.

Type of Review: Regular.

Affected Public: Individuals or households, business or other for profit entities, and not-for-profit institutions.

Estimated Number of Respondents: 114,380 housing units; 1,275 group quarters.

Estimated Time Per Response: 5 minutes per housing unit; 10 minutes per group quarters.

Estimated Total Annual Burden Hours: 9,532 hours for housing units; 213 for group quarters.

Estimated Total Annual Cost: There are no costs to respondents other than that of their time to respond.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 8.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: November 9, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–25371 Filed 11–15–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110804A]

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold a series of six public hearings to obtain input from fishers, the general public, and local agency representatives on the Draft Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean to Address Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act: Amendment 2 to the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands; Amendment 1 to the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands; Amendment 3 to the FMP to the Reeffish Fishery of Puerto Rico and the U.S. Virgin Islands; and Amendment 2 to the FMP for Corals and Reef Associated Invertebrates of Puerto Rico and the U.S. Virgin Islands, including Draft Supplemental Environmental Impact Statement, Regulatory Impact Review, and Regulatory Flexibility Analysis.

DATES: The hearings will be held in November and December 2004. See **SUPPLEMENTARY INFORMATION** for specific dates, locations, and times. Written comments will be accepted until 5 p.m. on December 31, 2004.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific locations.

Written comments should be sent to Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920; fax: 787–766–6239.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: 787–766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on the Draft Amendment to the FMPs of the U.S. Caribbean to Address Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act: Amendment 2 to the FMP for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands; Amendment 1 to the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands; Amendment 3 to the FMP to the Reeffish Fishery of Puerto Rico and the U.S. Virgin Islands; and Amendment 2 to the FMP for Corals and Reef Associated Invertebrates of Puerto Rico and the U.S. Virgin Islands, including Draft Supplemental Environmental Impact Statement, Regulatory Impact Review, and Regulatory Flexibility Analysis.

Public hearings will be held at the following dates, times, and locations:

1. Monday, November 29, 2004, Divi Carina Hotel, 35 Turner Hole, St. Croix, USVI 00820, from 7 to 10 p.m.;

2. Tuesday, November 30, 2004, Holiday Inn, Windward Passage, Veterans Drive, St. Thomas, USVI 00804, from 7 to 10 p.m.;

3. Monday, December 13, 2004, Ponce Holiday Inn, 3315 Ponce by Pass, Ponce, Puerto Rico 00728, from 1 to 4 p.m.;

4. Tuesday, December 14, 2004, Mayaguez Resort and Casino, Rd. 104 Km. .0.3, Barrio Agarrobo, Mayaguez, Puerto Rico 00681, from 1 to 4 p.m.;

5. Wednesday, December 15, 2004, Centro Comunal Las Croabas, Fajardo, Puerto Rico 00738, from 4 to 7 p.m.; and

6. Thursday, December 16, 2004, Normandie Hotel, San Juan, Puerto Rico 00901, from 1 to 4 p.m.

These meetings are physically accessible to people with disabilities. For more information or to request sign language interpretation and/or other auxiliary aids, please contact Miguel A. Rolón (see **ADDRESSES**) at least five days prior to the meeting date.

Dated: November 9, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–25432 Filed 11–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Munitions System Reliability will meet in closed session on November 22–23, 2004, at Eglin Air Force Base, Florida. This Task Force will review the efforts thus far to improve the reliability of munitions systems and identify additional steps to be taken to reduce the amount of unexploded ordnance resulting from munitions failures. The Task Force will: Conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: November 8, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–25337 Filed 11–15–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Public Meeting With Interested Parties on Improving Army's Ability To Quickly Acquire Materiel and Services To Meet Unforseen Operational Requirements

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This meeting involves surge planning and contracting issues with Army in support of unforeseen operational requirements. The Assistant Secretary of the Army for Acquisition, Logistics and Technology would like to hear the views of interested parties regarding the improvement of Army's ability to acquire needed but unforeseen operational requirements for producing additional weapon systems, parts, and services. Possible issues include procedures for establishing the meaningful contract options or other commitments without the need to have a legal reservation of funds. Other issues include an inability to forecast these requirements with precision, buying from nontraditional suppliers, buying nonstandard items and other issues submitted by attendees. Subsequent meetings may be held.

DATES: A public meeting will be conducted on December 7, 2004, beginning a 1 p.m. and continuing to 5 p.m., local time.

ADDRESSES: The location of the public meeting is Presidential Towers, Army Conference Room 11100, 11th Floor, located at 2511 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Steven R. Linke, *Steven.Linke@us.army.mil*, or telephone (703) 604–7006; fax (703) 604–7717.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–25392 Filed 11–15–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Logistics Agency (DLA) is proposing to make administrative changes to sixty-eight Privacy Act (PA) systems of records

notices. DLA is amending the Notification procedure, Record access procedures, and Contesting record procedures elements within the PA notices to reflect the new mailing address of the DLA Privacy Act Official.

DATES: This action will be effective without further notice on December 16, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the, Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended is set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 8, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

DLA is amending the mailing address of the DLA Privacy Act Officer within all its sixty-eight Privacy Act systems of records notices for the Notification procedure, Record access procedures, and Contesting record procedures elements of the system of records notice. The system identifier, the system name, and the amended elements are provided below.

S100.10 GC

SYSTEM NAME:

Whistleblower Complaint and Investigation Files (October 13, 1994, 59 FR 51966).

* * * * *

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S100.50 DLA–GC

SYSTEM NAME:

Fraud and Irregularities (November 16, 1993, 58 FR 60428).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S100.60 GC

SYSTEM NAME:

Claims and Litigation (January 20, 2000, 65 FR 3223).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals must provide name of litigant, year of incident, and should contain court case number in order to ensure proper retrieval in those situations where a single litigant has more than one case with the Agency.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written request for information should contain the full name, current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S100.70

SYSTEM NAME:

Invention Disclosure (February 6, 2004, 69 FR 5841).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains full name, current address and telephone numbers of requester.

For personal visits, each individual shall provide acceptable identification, *e.g.*, driver's license or identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S100.71

SYSTEM NAME:

Royalties (February 2, 2004, 69 FR 4930).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains full name, current address and telephone numbers of requester.

For personal visits, each individual shall provide acceptable identification, *e.g.*, driver's license or identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S100.90

SYSTEM NAME:

Attorney Personal Information and Applicant Files (May 13, 2004, 69 FR 26558).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name and, if known, date application was submitted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name and, if known, date application was submitted.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S153.20 DLA–I

SYSTEM NAME:

Personnel Security Information Subsystem of COSACS (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains the full name, Social Security Number, current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification, such as driver's license or employing office identification card, and give some verbal information that can be verified from his or her file.

DLA users may utilize an Audio Response Unit (ARU) accessed by Social Security Number to retrieve the individual's security clearance only.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S180.10 CA

SYSTEM NAME:

Congressional, Executive, and Political Inquiry Records (September 29, 1997, 62 FR 50910).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S180.20 CA

SYSTEM NAME:

Biography File (December 31, 1997, 62 FR 68268).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road,

Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S180.30 DSCR

SYSTEM NAME:

FOIA and Privacy Act Request Tracking System (February 20, 2003, 68 FR 8232).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name and current address, telephone number of the individual, and approximate time frame involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, current address, and telephone number of the individual. Depending on the nature of the records involved, requesters may be asked to supply Social Security Number and a notarized statement or a signed and dated unsworn declaration (in accordance with 28 U.S.C. 1746) stating under penalty of perjury that the information contained in the request for access, including their identity, is true and correct.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S200.10

SYSTEM NAME:

Individual Military Personnel Records (October 24, 2003, 68 FR 60974).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S200.20 CAH

SYSTEM NAME:

Active Duty Military Personnel Data Bank System (July 19, 1999, 64 FR 38661).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S200.30 CAI

SYSTEM NAME:

Reserve Affairs (February 1, 2000, 65 FR 4811).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S200.50 CAH

SYSTEM NAME:

Individual Weight Management File (July 14, 1999, 64 FR 37941).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S200.60 DD

SYSTEM NAME:

Chaplain Care and Counseling Records (August 27, 1999, 64 FR 46889).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S253.31 DLA–G

SYSTEM NAME:

Patent Licenses and Assignments (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains full name, current address and telephone numbers of requester.

For personal visits, each individual shall provide acceptable identification, *e.g.*, driver's license or identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S259.05 DLA–G

SYSTEM NAME:

Legal Assistance (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name and, if appropriate, date assistance was requested.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S300.10 CAH

SYSTEM NAME:

Voluntary Leave Transfer Program Records (August 3, 1999, 64 FR 42100).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.01 DMDC

SYSTEM NAME:

Defense Outreach Referral System (DORS) (May 19, 1999, 64 FR 27238).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer,

Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.05 DMDC

SYSTEM NAME:

Noncombatant Evacuation and Repatriation Data Base (May 7, 1999, 64 FR 24626).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written inquiry should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.09 DMDC

SYSTEM NAME:

Joint Duty Assignment Management Information System (May 28, 1999, 64 FR 29008).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains the full name, Social Security Number, current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base (June 8, 2004, 69 FR 31974).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.11 DMDC

SYSTEM NAME:

Federal Creditor Agency Debt Collection Data Base (August 3, 1999, 64 FR 42101).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for information should contain the full name, Social Security Number, current address and telephone number of the individual requesting information.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS) (June 16, 2003, 68 FR 35652).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

The rules for contesting contents are contained in DoD Manual 7730.47–M, Manual for Defense Incident-Based Reporting System, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221. Requests for amendment will be forwarded to the DoD Component which supplied the contested information for adjudication under the Privacy Act rules published by that Component.

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S322.20 DMDC

SYSTEM NAME:

Recruitment Eligible File (June 1, 1999, 64 FR 29290).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for information should contain the full name, current address, telephone number, Social Security Number, and date of separation of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as a driver's license.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.35 DMDC

SYSTEM NAME:

Survey and Census Data Base (August 27, 1999, 64 FR 46889).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, and current address and telephone numbers of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some acceptable identification such as a driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, and current address and telephone numbers of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some acceptable identification such as a driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.50 DMDC

SYSTEM NAME:

Defense Eligibility Records (June 15, 2004, 69 FR 33376).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and

duty location. Identification should be corroborated with a driver's license or other positive identification.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S322.60 DMDC

SYSTEM NAME:

Archival Purchase Card File (June 4, 2002, 67 FR 38488).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name used on the account and the account number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name used on the account and the account number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S330.10

SYSTEM NAME:

Alternative Workplace Program Records (August 24, 2004, 69 FR 52001).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals must supply the name of the DLA facility or activity where employed at the time the papers were created or processed.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S330.40 CAHS

SYSTEM NAME:

Employee Assistance Program Records (August 27, 1999, 64 FR 46889).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S330.50 CAH

SYSTEM NAME:

Official Personnel Files for Non-Appropriated Fund Employees (August 3, 1999, 64 FR 42101).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Inquiry should contain requester's full name, Social Security Number, and location of organization and physical location where employed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Inquiry should contain requester's full name, Social Security Number, and location of organization and physical location where employed.

For personal visits employee should be able to provide some acceptable identification such as driver's license or employee identification badge.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S335.01

SYSTEM NAME:

Training and Employee Development Record System (November 18, 2003, 68 FR 65047).

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Logistics Agency Training Center, Building 11, Section 5, 3990 E. Broad Street, Columbus, OH 43216–5000 and Staff Director, Business Management Office, DLA Enterprise

Support, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Current DLA employees may determine whether information about themselves is contained in subsets to the master file by accessing the system through their assigned DLA computer or by contacting their immediate supervisor.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Current DLA employees may gain access to data contained in subsets to the master file by accessing the system through their assigned DLA computer or by contacting their immediate supervisor.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S340.10 DLA–KM

SYSTEM NAME:

Time and Attendance Labor Exception Subsystem of APCAPS (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Request should contain full name and organizational location of employee.

For personal visits, individual should be able to provide some acceptable identification such as activity identification card or driver's license.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S340.20 CAHS

SYSTEM NAME:

Official Records for Host Enrollee Programs (August 27, 1999, 64 FR 46889).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES—B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S352.10 DLA–KW

SYSTEM NAME:

Award, Recognition, and Suggestion File (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name, type of award, suggestion description, and activity at which nomination or suggestion was submitted.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name, type of award, suggestion description, and activity at which nomination or suggestion was submitted.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S360.10 DLA KI

SYSTEM NAME:

HQ DLA Automated Civilian Personnel Data Bank System (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Requester must provide last name, first name, middle initial, and Social Security Number. If request is by mail, requester must also furnish current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Requests for information must be in writing and contain last name, first name, middle initial, date of birth, current address, phone number, phone number where individual may be reached during the day, and a signed statement certifying that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to 5,000 dollars. Complete records are maintained only on magnetic tapes or discs and are not available for access by personal visits.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S360.20

SYSTEM NAME:

Civilian Personnel Data System (October 9, 2001, 66 FR 51405).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals must provide name (last, first, middle initial) and Social Security Number in order to determine whether or not the system contains a record about them. With a written request, individual must provide a return address.

For personal visits, the individual should be able to provide some acceptable identification, such as employing office identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

The request is to contain the name of the individual (last, first, middle initial), Social Security Number, return mailing address, telephone number where individual can be reached during the day, and a signed statement certifying that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to 5,000 dollars. Complete records are maintained only on magnetic tapes or discs and are not available for access by personal visits. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S370.10 CAHS

SYSTEM NAME:

Labor Management Relations Records System (September 21, 1999, 64 FR 51103).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S370.20 CAHS

SYSTEM NAME:

Employee Relations Under Negotiated Grievance Procedures (October 18, 1999, 64 FR 56198).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S380.50 CAHS

SYSTEM NAME:

DLA Drug-Free Workplace Program Records (August 27, 1999, 64 FR 46889).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals must provide name; date of birth; Social Security Number; I.D. Number (if known); approximate date of record; and activity and position title.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals must provide name; date of birth; Social Security Number; I.D.

Number (if known); approximate date of record; and activity and position title.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S400.10 CA

SYSTEM NAME:

Social, Athletic, and Recreation Center Membership and Use Records (June 30, 1997, 62 FR 35160).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S400.20

SYSTEM NAME:

Day Care Facility Registrant and Applicant Records (April 26, 2002, 67 FR 20754).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S400.50 CA

SYSTEM NAME:

Family Support Program Volunteer Files (April 12, 1999, 64 FR 17642).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S400.60 CA

SYSTEM NAME:

DLA Guest Lodging Files (April 12, 1999, 64 FR 17642).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S434.15 DLA–C

SYSTEM NAME:

Automated Payroll Cost and Personnel System (APCAPS) (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests must contain full name and Social Security Number of the employee. Employees making a personal request must present identification.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S434.87 DLA–C

SYSTEM NAME:

Debt Records for Individuals (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains their full name, current address and telephone number.

For personal visits, the individual should be able to provide acceptable identification, such as an employee badge or driver's license, etc.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.10 DLA–I

SYSTEM NAME:

Personnel Security Files (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for access will contain the full name, Social Security Number, date and place of birth, current address, and telephone number of the requester.

Written requests must either be notarized or contain an identity declaration penalty statement. If executed within the United States, its territories, possessions, or commonwealths the statement must read: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

If executed outside the United States, its territories, possessions, or commonwealths the statement must read:

''I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

The identity declaration statement must be signed and dated.

For personal visits, the requester must be able to provide some acceptable identification (*e.g.*, driver's license, identification card), parent's name, date and place of birth, dates and place(s) of employment with DLA, if applicable.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.20 DLA–I

SYSTEM NAME:

Criminal Incidents/Investigations File (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name, current address and telephone numbers.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.30 CAAS

SYSTEM NAME:

Incident Investigation/Police Inquiry Files (January 20, 2000, 65 FR 3220).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals are required to provide name, Social Security Number, employing activity name and address, and, if known, place of investigation. In addition, individuals must provide either a notarized signature or a signed and dated unsworn declaration (in accordance with 28 U.S.C. 1746) stating under penalty of perjury under U.S. law that the information contained in the request, including their identity, is true and correct.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals are required to provide name, Social Security Number, employing activity name and address, and, if known, place of investigation. In addition, individuals must provide either a notarized signature or a signed and dated unsworn declaration (in accordance with 28 U.S.C. 1746) stating under penalty of perjury that the information contained in the request for access, including their identity, is true and correct.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may

be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.40 CAAS

SYSTEM NAME:

Police Force Records (September 14, 1999, 64 FR 49780).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.41 CAAS

SYSTEM NAME:

Vehicle/Traffic Incident Files (July 30, 1999, 64 FR 41399).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name, date of incident, and the location of the incident.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name, date of incident, and the location of the incident.

For personal visits, the individual should be able to provide some acceptable identification, such as, driver's license or employing agency identification card. Some verbal information may be required to verify the file.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.42 CAAS

SYSTEM NAME:

Seizure and Disposition of Property Records (June 8, 1999, 64 FR 30494).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide full name, Social Security Number, current address, and telephone numbers.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that could be verified from his file.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.43 CAAS

SYSTEM NAME:

Firearms Registration Records (June 8, 1999, 64 FR 30494).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name, Social Security Number, home address, and location of DLA installation where firearm was registered.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains the full name, current address and telephone numbers of the individual. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that can be verified from his file.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.50

SYSTEM NAME:

Access and Badging Records (February 26, 2002, 67 FR 8790).

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SYSTEM LOCATION:

Staff Director, Office of Command Security, Headquarters Defense Logistics Agency, ATTN: DES–S, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency Field

Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Visitor security clearance data is also maintained by the Chief, Internal Review Group, Headquarters Defense Logistics Agency, ATTN: J–308, 8725 John J. Kingman Road, Stop 6233, Fort Belvoir, VA 22060–6221.

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S500.60 CA

SYSTEM NAME:

DLA Complaint Program Records (March 6, 1998, 63 FR 11226).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals are required to provide name, Social Security Number, employing activity name and address, and, if known, place of investigation.

In addition, individuals must provide either a notarized signature or a signed and dated unsworn declaration, in accordance with 28 U.S.C. 1746, stating under penalty of perjury under U.S. law that the information contained in the request, including their identity, is true and correct.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals are required to provide name, Social Security Number, employing activity name and address, and, if known, place of investigation.

In addition, individuals must provide either a notarized signature or a signed and dated unsworn declaration, in accordance with 28 U.S.C. 1746, stating under penalty of perjury that the information contained in the request for access, including their identity, is true and correct.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S600.10 CAAE

SYSTEM NAME:

Hazardous Materials Occupational Exposure History Files (September 21, 1999, 64 FR 51109).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S600.20 MMDI

SYSTEM NAME:

Firefighter/Emergency Medical Technician (EMT) Records (September 22, 1993, 58 FR 49290).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S600.30

SYSTEM NAME:

Safety, Health, Injury, and Accident Records (August 24, 2004, 69 FR 52002).

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SYSTEM LOCATION:

Environment and Safety Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the DLA field activity Safety and Health offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Records are also maintained by DLA Security Control Centers, Emergency Support Operations Centers, and fire and rescue departments certified to provide primary response and medical aid in emergencies. Official mailing addresses are available from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725

John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S600.40

SYSTEM NAME:

Readiness and Accountability Records (January 5, 2004, 69 FR 329).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S690.10 DLSC

SYSTEM NAME:

Individual Vehicle Operators File (September 21, 1999, 64 FR 51110).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S700.10 DSS

SYSTEM NAME:

Travel Input Records (December 1, 2000, 65 FR 75254).

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SYSTEM IDENTIFIER:

Replace ''DSS'' with ''DES''.

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SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Defense Logistics Agency Travel Coordinator, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and Financial Liaison Offices of the DLA Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide full name and Social Security Number.

DLA employees and military members with direct access to the on-line database may query the database by providing their name and password.

To determine if records older than 15 months are contained within the electronic system, individuals should address a written inquiry to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide full name and Social Security Number.

For access to electronic records created at HQ DLA within the past 15 months, DLA employees and military members with online access to the database may query the database by providing their name and password. For access to archived electronic records stored off-line, address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, providing name and Social Security Number.

Individuals who do not have access to the HQ DLA database should submit written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221 providing name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S800.10 DLSC

SYSTEM NAME:

Federal Property End Use Files (January 20, 2000, 65 FR 3222).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S810.50 DLA–P

SYSTEM NAME:

Contracting Officer Files (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individual must provide full name and name of DLA activity at which employed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains the full name, current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification, that is driver's license, or DLA identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S850.10 DCMC–Q

SYSTEM NAME:

Contractor Flight Operations (February 22, 1993, 58 FR 10854).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals will be asked to provide name, Social Security Number, or both, to facilitate access.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

For personal visits, the individual may be asked to show a valid identification card, a drivers' license, or some similar proof of identity.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S900.10

SYSTEM NAME:

Personnel Roster/Locator Files (December 26, 2002, 67 FR 78780).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S900.20 CA

SYSTEM NAME:

Workforce Composition, Workload, and Productivity Records (December 6, 1996, 61 FR 64709).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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S900.40

SYSTEM NAME:

Government Telephone Use Records (September 8, 2003, 68 FR 52909).

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NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves

is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals must supply their full name and the DLA facility or activity where employed at the time the records were created or processed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals must supply their full name and the DLA facility or activity where employed at the time the records were created or processed.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

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[FR Doc. 04–25335 Filed 11–15–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy is amending 12 systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The amendment consists of changing the URL for the Standard Navy Distribution List to *http://neds.daps.dla.mil/sndl.htm.* The notices affected are N01070–3, NM01543–1, N01650–1, NM05000–1, NM05000–2, NM05000–3, NM05100–4, NM05211–1, NM05380–1, NM05720–1, NM06150–3, and NM12610–1.

DATES: This proposed action will be effective without further notice on December 16, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 8, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

N01070–3

SYSTEM NAME:

Navy Military Personnel Records System (May 11, 2004, 69 FR 26083).

SYSTEM LOCATION:

Primary locations: Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120 for records of all active duty and reserve members (except Individual Ready Reserve (IRR)); and for records of members that were retired, discharged, or died while in service since 1995;

Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800 for records of all IRR members;

National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100 for records of members that were retired, discharged, or died while in service prior to 1995.

Secondary locations: Personnel Offices and Personnel Support Detachments providing administrative support for the local activity where the individual is assigned. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 42 U.S.C. 10606 as implemented by DoD Instruction 1030.1, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease, of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, in the performance of their official duties related to eligibility, notification and assistance in obtaining health and medical benefits by members and former members of the Navy.

To the U.S. Citizenship and Immigration Services for use in alien admission and naturalization inquiries.

To the Office of Personnel Management for verification of military service for benefits, leave, or reduction-in-force purposes, and to establish Civil Service employee tenure and leave accrual rate.

To the Director of Selective Service System in the performance of official duties related to registration with the Selective Service System.

To the Social Security Administration to obtain or verify Social Security Numbers or to substantiate applicant's credit for social security compensation.

To officials and employees of the Department of Veterans Affairs in the performance of their duties relating to approved research projects, and for processing and adjudicating claims, benefits, and medical care.

To officials of the U.S. Coast Guard (USCG) for the purpose of creating service records for current USCG members that had prior service with the Navy.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy. Access will be limited to those portions of the member's record required to effectively assist the member.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress. Access is limited to those portions of the member's record required to verify service time.

To provide information and support to victims and witnesses in compliance with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To Federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and Federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Those documents that are designated as temporary in the prescribing regulations remain in the record until their obsolescence, or the member is separated from the Navy, then are removed and provided to the individual. Those documents designated as permanent are submitted to Navy Personnel Command at predetermined times to form a single personnel record in the Electronic Military Personnel Records System (EMPRS), and remain in EMPRS permanently. Permanent records are transferred to the National Archives and Records Administration 62 years after the completion of the service member's obligated service.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3130; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to:

Inquiries regarding permanent records of all active duty and reserve members (except Individual Ready Reserve (IRR)), former members discharged, deceased, or retired since 1995, should be addressed to the Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120;

Inquiries regarding records of reserve members serving in the Individual Ready Reserve (IRR) should be addressed to the Commanding Officer, Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800;

Inquiries regarding records of former members discharged, deceased, or retired before 1995 should be addressed to the Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100. You may access their Web site at *http://www.nara.gov/regional/mpr.html* to obtain guidance on how to access records;

Inquiries regarding field service records of current members should be addressed to the Personnel Office or Personnel Support Detachment providing administrative support to the local activity to which the individual is assigned. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to:

Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120 for records of all active duty and reserve members (except Individual Ready Reserve (IRR);

Commanding Officer, Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800;

Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100 for records of former members discharged, deceased, or retired before 1995. Visit their Web site at *http://www.archives.gov/facilities/mo/st_louis/military_personnel_records.html* to download SF180 to request records through regular mail or to file an electronic request for records;

The Personnel Office or Personnel Support Detachment providing administrative support to the local activity to which the individual is assigned for field service records of current members. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

Current members, active and reserve, may visit the Navy Personnel Command, Records Review Room, Bldg 109, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.''

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; Federal, State, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NM01543–1

SYSTEM NAME:

Explosives Handling Qualification/Certification Program (December 9, 2003, 68 FR 68613).

SYSTEM LOCATION:

Organization elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy, Marine Corps, civilian and contractor personnel involved in the process or evolution of explosives operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Training records contain copies of the individual's state driver's license, Social Security Number, date of birth, home and office addresses, medical certificate stating that an individual has passed an exam by a doctor and is authorized to handle explosives, forklift/government driver's license, date of exam and expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Departmental Regulations; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAVINST 8020.14/MCO P8020.11, Department of the Navy Explosives Safety Program; and E.O. 9397 (SSN).

PURPOSE(S):

To record the names and training of all employees and their qualifications to work in certain categories of explosives operations.

To ensure all individuals performing explosives inspections can validate an individual's qualifications to perform a certain task.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Name and/or Social Security Number.

SAFEGUARDS:

Documents are marked ''FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE'' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.

RETENTION AND DISPOSAL:

Retain on board and destroy three years after an employee terminates or is no longer involved in explosives processes.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commanding Officer, Naval Ordnance Safety and Security Activity, 23 Strauss Avenue, Farragut Hall, Building D–323, Indian Head, MD 20640–5035.

Record Holder: Commanding officer or head of the organization in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer or head of the organization in question. Individuals may inspect personnel certifying documents at local activity to which individual assigned. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer or head of the organization in question. Individuals may inspect personnel certifying documents at local activity to which individual assigned. Official

mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

CONTESTING RECORD PROCEDURES:

The Department of the Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, personnel files, physician, and supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01650–1

SYSTEM NAME:

Navy Military Awards System (May 13, 2004, 69 FR 26559).

SYSTEM LOCATION:

Navy Department Awards System, Naval Computer Telecommunications Station, 1325 10th Street, Washington Navy Yard, DC 20374–5069; and organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All recipients of Navy personal awards, to include the U.S. Coast Guard, and Navy military personnel who receive personal awards from other U.S. Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Approved individual personal awards for 1967 and continuing; approved unit awards for 1941 and continuing; Navy Department Awards Web Service—File includes awards approved by the Secretary of the Navy and those authorized for approval by subordinate commanders. Record includes service member's name, service number/Social Security Number, award recommended, and award approved. A second section of the file contains activities awarded Unit Awards and the dates of eligibility; microfilm copies of approved World War II—1967 personal awards; Navy Department Awards Web Service electronic data base that includes data extracted from OPNAV Form 1650/3, Personal Award Recommendation, such as name, Social Security Number, type of award, approval authority, recommended award, approved award, meritorious start and end dates, service status of recipient, originator of the recommendation, designator, Unit Identification Codes, officer or enlisted, service component, rate/rating, pay grade, number of award recommended, assigned billet of individual, campaign designation, classified or unclassified designated award, date of recommendation, award approved date, approved award, chain of command data, extraordinary heroism determination, letter type, board serial number, pertinent facts, date forwarded to Secretary of the Navy, Board's recommendation, participating command field, Board meeting data, receipt date by Board of Decorations and Medals, name of unit, name of ship, command points of contact that includes telephone numbers and e-mail addresses, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; Secretary of the Navy Instruction 1650.1G, Navy and Marine Corps Awards Manual; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records of military personal awards and unit awards and to electronically process award recommendations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic, paper, and microfilm records.

RETRIEVABILITY:

Name, Social Security Number, and individual unit name.

SAFEGUARDS:

Automated database requires authorized access; password protected; some user sites only have read capability; designated user capability regarding add/delete/change functions. Paper and microfiche records are under the control of authorized personnel during working hours and the office space in which records are located is locked outside official working hours.

RETENTION AND DISPOSAL:

Permanent. A duplicate copy of the active file is provided to the National Archives and Records Administration. History files for the years 1967 to 1989 have been transferred to NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (DNS–37), 2000 Navy Pentagon, Washington, DC 20350–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should contact their local Personnel Support Activity or Personnel Support Detachment for a search of their Navy military personnel record or write to the Chief of Naval Operations (DNS–37) 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, time period of award, and request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should contact their local Personnel Support Activity or Personnel Support Detachment for a search of their Navy military personnel record or write to the Chief of Naval Operations (DNS–37) 2000 Navy Pentagon, Washington, DC 20350–2000.

Request should include full name, Social Security Number, time period of award, and request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Navy Department Awards Web Service; OPNAV Form 1650/3, Personal Award Recommendation Form; general orders; military personnel file; medical file; deck logs; command histories; and award letter 1650.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NM05000–1

SYSTEM NAME:

General Correspondence Files (February 23, 2004, 69 FR 8187).

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the

Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have initiated correspondence with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence which may include name, address, telephone number, organization, date of birth, and Social Security Number of correspondent and supporting documentation. Files also contain copy of response letter and documentation required to prepare the response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corp; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a record of correspondence received and responses made.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, organization, and date of correspondence.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

The request should contain full name and date individual wrote to the activity or received a response. Request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

The request should contain full name and date individual wrote to the activity or received a response. Request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned and records collected by the activity to respond to the request.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NM05000–2

SYSTEM NAME:

Administrative Personnel Management System (February 23, 2004, 69 FR 8187).

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence needed to manage personnel and projects, such as Name, Social Security Number, date of birth, photo id, grade and series or rank/rate, etc., of personnel; location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, access to secure spaces and issuance of keys, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs; retirement category; awards; biographical data; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual aid association memberships; union memberships; qualifications; computerized modules used to track personnel data; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer programs for all Department of the Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget;

travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation; projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Destroy when no longer needed or after two years, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications, duty officer, investigations, OPM officials, and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NM05000–3

SYSTEM NAME:

Organization Locator and Social Roster (February 23, 2004, 69 FR 8187).

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel attached to the activity, Departments of the Navy and Defense, or other government agencies; family members; and guests or other invitees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual or mechanized records. Includes information such as names, addresses, telephone numbers; official titles or positions and organizations; invitations, acceptances, regrets, protocol, and other information associated with attendants at functions. Locator records of personnel attached to the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To notify personnel of arrival of visitors; recall personnel to duty station when required; locate individuals on routine matters; provide mail distribution and forwarding addresses; compile a social roster for official and non-official functions; send personal greetings and invitations; and locate individuals during medical emergencies, facility evacuations, and similar threat situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated records.

RETRIEVABILITY:

Name, Social Security Number, and/or organization code.

SAFEGUARDS:

Documents are marked ''FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE'' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.

RETENTION AND DISPOSAL:

Records are destroyed upon update of roster to add/delete individuals who have arrived/departed the organization.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.daps.dla.mil/sndl.htm.*

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and records of the activity.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NM05100–4

SYSTEM NAME:

WESS Occupational Injuries/Illnesses System (March 24, 2004, 69 FR 13824).

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Navy (DoN) military and civilian personnel, non-appropriated and foreign national civilian personnel, and DoD military personnel attached to DoN components, who are involved in accidents or occupational illnesses that result in lost time, government or private property damage or destruction, and personnel injury or death.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains a civilian/military indicator, event reference number, case or file number, unit identification code (UIC), activity name, major command code, last name, first name and middle initial, department, sex, age, job title, marital status and number of dependents, rank/rate/grade, Social Security Number, date of mishap/illness, time of mishap/illness, general location of mishap/illness, lost workday count, injury/illness type, Occupational Safety and Health Administration (OSHA) code, part(s) of body injured, mishap/illness type, object involved (injury source), process control number (job/activity at time of mishap), chemical involved, chemical comments, formal training involved; case type (fatality, lost time, no lost time, first aid), mishap class, date of death, short narrative, start date, sent date, and claims information. The database also contains causal, 72-hour profile, involved chemical, involved sharp items, drug factors, licenses and certifications, safety course, personal protective equipment, dive log, dive saturation, dive treatment, parachute jump, vehicle, and insertion/ extraction/ scaling technique information as is applicable to the type of mishap the individual is involved in.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; E.O. 9397 (SSN); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; DoD Instruction 6055.7, Accident Investigation, Reporting, and Record Keeping; OPNAVINST 5102.1 series, Mishap Investigation and Reporting; and MCO P5102.1B, Marine Corps Ground Mishap Investigation and Reporting Manual.

PURPOSE(S):

To collect information on injuries and occupational illnesses required of Federal governmental agencies by the Occupational Safety and Health Administration (OSHA). The summary data of occupational injuries or illnesses maintained in this system will be used for analytical purposes to improve the Department of the Navy's accident prevention policies, procedures, standards, and operations, as well as ensure internal data quality assurance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

By individual's name, Social Security Number, location of the accident or illness, or date of mishap or illness.

SAFEGUARDS:

File cabinets and computer terminals are located in limited access areas and handled by personnel that are properly trained in working with automated Privacy Act systems of records. Computer terminals are password protected.

RETENTION AND DISPOSAL:

Naval Safety Center computerized records are maintained for 20 fiscal years following the end of the fiscal year to which they relate. All other records held outside of the Naval Safety Center are maintained for five years following the end of the fiscal year to which they relate and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399.

Record Holder: Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the local activity where the mishap or injury occurred.

The request should contain full name, Social Security Number and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of the local activity where the mishap or injury occurred.

The request should contain full name, Social Security Number and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Safety Investigation Reports, departmental records such as personnel file excerpts, medical record excerpts, State and Federal records, and excerpts of police reports, witness statements and general correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NM05211–1

SYSTEM NAME:

Privacy Act Request Files and Tracking System (January 5, 2004, 69 FR 333).

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Navy or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to or amendment of records concerning that person, including letters authorizing release to another individual, letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974. Names, addresses, and other personal identifiers of the individual requester. Database which tracks action from start to finish.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, The Privacy Act of 1974, as amended; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; E.O. 9397 (SSN); Secretary of the Navy Instruction 5211.5D, Department of the Navy Privacy Act Program.

PURPOSE(S):

To track, process, and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records; to compile information for reports, and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, microform, microfilm, manual/computerized databases, and/or optical disk.

RETRIEVABILITY:

Name of requester; year request filed; serial number of response letter; case file number; *etc.*

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms. Computerized databases are password protected and accessed by individuals who have a need to know.

RETENTION AND DISPOSAL:

Granted requests, responses to requests for non-existent records, responses to requesters who provide inadequate descriptions and responses to requesters who fail to pay agency reproduction fees that are not appealed are destroyed 2 years after date of reply; requests which are denied and are appealed are destroyed after 5 years; requests which are amended are retained for 4 years; requests for amendment which are refused are destroyed after 3 years; disclosure accounting forms are retained for the life of the record of 5 years after the disclosure, whichever is later; and privacy act databases are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

Record Holders: Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488; and

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

The request must be signed and contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

The request must be signed and contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number.

CONTESTING RECORD PROCEDURES:

The Department of the Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Navy organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those ''other'' systems of records are entered into these PA case records, the Department of the Navy hereby claims the same exemptions for the records as they have in the original primary systems of records of which they are a part.

Department of the Navy exemption rules have been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 701, Subpart G. For additional information contact the system manager.

NM05380–1

SYSTEM NAME:

Combined Federal Campaign/Navy and Marine Corps Relief Society (January 5, 2004, 69 FR 333).

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security Numbers, payroll identifying data, contributor cards and lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and, E.O.s 9397 (SSN), 10927 and 12353.

PURPOSE(S):

To manage the Combined Federal Campaign and Navy and Marine Corps Relief Society Fund drives and provide the respective campaign coordinator with necessary information. Payroll deduction contribution data is supplied to the Defense Finance and Accounting Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and computerized records.

RETRIEVABILITY:

Name, Social Security Number, and organization.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; payroll files; personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NM05720–1

SYSTEM NAME:

FOIA Request Files and Tracking System (January 5, 2004, 69 FR 333).

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request access to information under the provisions of the Freedom of Information Act (FOIA) or make an appeal under the FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

FOIA request, copies of responsive records (redacted and released), correspondence generated as a result of the request, cost forms, memoranda, legal opinions, messages, and miscellaneous documents which related to the request.

Database used to track requests from start to finish and formulate response letters may contain names, addresses, and other personal identifiers of the individual requester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, the Freedom of Information Act, as amended; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C.

5041, Headquarters, Marine Corps; E.O. 9397 (SSN); and Secretary of the Navy Instruction 5720.42F, Department of the Navy Freedom of Information Act Program.

PURPOSE(S):

To track, process, and coordinate requests/appeals/litigation made under the provisions of the FOIA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To individuals who file FOIA requests for access to information on who has made FOIA requests and/or what is being requested under FOIA.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, microform, microfilm, manual/computerized databases, and/or optical disk.

RETRIEVABILITY:

Name of requester; year request filed; serial number of response letter; case file number; etc.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in cabinets or rooms, which are not viewable by individuals who do not have a need to know. Computerized databases are password protected and accessed by individuals who have a need to know.

RETENTION AND DISPOSAL:

Granted requests, no record responses, and/or responses to requesters who fail to adequately described the records being sought or fail to state a willingness to pay processing fees are destroyed 2 years after date of reply. Requests which are denied in whole or in part, appealed, or litigated are destroyed 6 years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

Record Holders: Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Freedom of Information Act coordinator or commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

The request should contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number. Requests must also be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act coordinator or commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List (SNDL) available at *http://neds.daps.dla.mil/sndl.htm.*

The request should contain the full name of the individual and one or more of the following kinds of information: year request filed; serial number of response letter; case file number. Requests must also be signed.

CONTESTING RECORD PROCEDURES:

The Department of the Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Navy organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this FOIA case record, the Department of the Navy hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

Department of the Navy exemption rules have been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 701, Subpart G. For additional information contact the system manager.

NM06150–3

SYSTEM NAME:

Health/Dental Research Center Data File (September 8, 2004, 69 FR 54275).

SYSTEM LOCATION:

Naval Medical Research and Development Command, Naval Medical Research Institute, Naval Health Research Center, and/or Naval Dental Research Institute to which individual is assigned. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

For medical: Navy and Marine Corps personnel on active duty since 1960 to date and civilians taking part in Operation Deep Freeze, 1964 to date; for U.S. Coast Guard, Air Force, and Army personnel on active duty since 1980.

For dental: Navy and Marine Corps personnel on active duty since 1967 to date.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of information from official medical/dental and personnel records, results of dental examinations conducted by staff research scientists, as well as information dealing with biographical, attitudes, and questions relating to medical and dental health patterns during active service or prior to active duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 5041, Headquarters, Marine Corps; 14 U.S.C. 93, Commandant, U.S. Coast Guard General Powers; and E.O. 9397 (SSN).

PURPOSE(S):

To research, monitor and analyze the types and frequency of medical and dental diseases and illnesses in Navy, Marine Corps, U.S. Coast Guard, Air Force, and Army personnel.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Retrievability is by Social Security Number or service number as appropriate for military and former military personnel. Civilians are by name only.

SAFEGUARDS:

Access is restricted to personnel having a need to work with the research data stored. Access is controlled by password for health records stored on magnetic tape. Computerized dental research records contain I.D. numbers that can be matched to Social Security Numbers on code sheets maintained by research personnel.

RETENTION AND DISPOSAL:

Research records are permanent. Paper records, if used, are maintained for five years at the activity performing the research and then retired to the Federal Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the activity in question.

Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

Navy, Marine Corps, U.S. Coast Guard, Air Force, and Army personnel and former serving members must provide a Social Security Number or service number as appropriate, give the branch of service, and years of active duty. Civilians in Operation Deep Freeze must identify themselves by full name and the year in which they wintered over.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of the activity in question.

Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

Navy, Marine Corps, U.S. Coast Guard, Air Force, and Army personnel and former serving members must provide a Social Security Number or service number as appropriate, give the branch of service, and years of active duty. Civilians in Operation Deep Freeze must identify themselves by full name and the year in which they wintered over.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is derived from (a) Medical Treatment Record Systems, including medical, dental, health records, inpatient treatment records and outpatient treatment records, (b) Personnel Records System and Personnel Rehabilitation Support System, (c) Enlisted Master File, (d) information provided by the members themselves on a volunteer basis in response to specific research questionnaires and forms, (e) information provided by the members' peers and superiors, and (f) the Defense Manpower Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NM12610–1

SYSTEM NAME:

Hours of Duty Records (May 25, 2004, 69 FR 29705).

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

Commander, U.S. Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander, U.S. Pacific Command, P.O. Box 64028, Camp H.M. Smith, HI 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains such information as name, grade/rate, Social Security Number, organizational code, work center code, grade code, pay rate, labor code, type transaction, hours assigned.

Database includes scheduling and assignment of work; skill level; tools issued; leave; temporary assignments to other areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To effectively manage the work force.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computerized records.

RETRIEVABILITY:

Name, organization code, Social Security Number, and work center.

SAFEGUARDS:

Access is provided on need-to-know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed when three years old.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published in the Standard Navy Distribution List available at *http://neds.daps.dla.mil/sndl.htm.*

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, correspondence, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–25336 Filed 11–15–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Regional Advisory Committees: Open Meeting

AGENCY: Office of Elementary and Secondary Education, ED.

ACTION: Notice of open orientation meeting.

SUMMARY: This notice sets forth the schedule and agenda of the forthcoming orientation meeting of the Regional Advisory Committees (RACs). This notice also describes the functions of the RACs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: December 2, 2004, from 8:30 a.m. to 4 p.m. and December 3, 2004, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The Mayflower Hotel, 1127 Connecticut Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Enid Simmons, 202–708–9499 or at *enid.simmons@ed.gov.*

SUPPLEMENTARY INFORMATION: The Regional Advisory Committees are established under section 206 of the Educational Technical Assistance Act of 2002, (20 U.S.C. 9605). The RACs are to advise the Secretary by (1) conducting an educational needs assessment of each region described in section 174(b) of the Education Sciences Reform Act of 2002; and (2) submitting reports for each region based on the regional assessments no later than 4 months after the committees are first convened.

The general public is welcome to attend the December 2–3, 2004, orientation meeting. However, space is limited and will be available to persons who pre-register. Registration will be accepted on a first-come, first-served basis up to the limits of the space available. Individuals who want to attend the meeting must send their name and contact information to Geogette Joyner at The CNA Corporation, 4825 Mark Center Drive, Alexandria, VA 22311, or at *joynerg@cna.org,* by no later than Monday, November 29, 2004.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Georgette Joyner at The CNA Corporation by no later than Monday, November 29, 2004. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

The purposes of the open meeting are to:

(1) Orient RAC members to:

- The legislative charge that will guide their work,
- The status of the RACs with regard to FACA,
- The FACA operational and reporting procedures they will need to follow,
- RAC and member roles, responsibilities and tasks, and
- The parameters within which each RAC is to undertake and complete its needs assessment and finalize its report;

(2) Familiarize RAC members with available assistance and tools; and

(3) Help each RAC formulate a framework for conducting its work.

A summary of meeting activities will be available to the public online (*http://www.rac-ed.org*) within 14 days of the meeting and for public inspection at the office of Georgette Joyner, The CNA Corporation, 4825 Mark Center Drive, Alexandria, VA 22311 between the hours of 9 a.m. and 5 p.m.

Dated: November 8, 2004.

Raymond Simon,

Assistant Secretary, OESE.

[FR Doc. 04–25375 Filed 11–15–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Consolidation of Nuclear Operations Related to Production of Radioisotope Power Systems

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA) of 1969, for the proposed consolidation of nuclear activities related to production of radioisotope power systems (RPS) required for Government national security and space exploration missions at a single, highly secure DOE site. Currently, DOE's ongoing RPS-related production operations are located at three DOE sites in Idaho, New Mexico and Tennessee, requiring the transport of radioactive material that could be avoided by consolidation of these activities at a single site. The proposed consolidation of these operations, which includes production, purification, and encapsulation of plutonium-238 (Pu-238), would be consistent with DOE's approach on consolidating nuclear materials, increasing the security of nuclear materials, and reducing risks associated with transportation of nuclear materials. The EIS will analyze all reasonable alternatives for the consolidation of the RPS operations as well as the No Action alternative.

DATES: DOE invites public comments on the proposed scope of this EIS. The public scoping period begins with the publication of this notice and concludes on January 31, 2005. DOE invites the general public, Native American Tribes, State and local governments, other Federal agencies, DOE stakeholders, and

other interested parties to comment on the scope of this EIS. To ensure that comments are considered in the preparation of the EIS, the comments should be transmitted or postmarked by January 31, 2005. Late comments will be considered to the extent practicable.

DOE will conduct seven public scoping meetings in Idaho Falls, Twin Falls, and Fort Hall, Idaho; Jackson Hole, Wyoming; Los Alamos, New Mexico; Oak Ridge, Tennessee; and Washington, DC. During the scoping meetings, DOE will provide information on the proposed consolidation project and receive oral and written comments on the scope of the EIS, including those regarding reasonable alternatives and environmental issues that DOE should consider. The location, date, and time for these public meetings are as follows:

Idaho Falls, ID: Monday, December 6, 2004, from 6–8:30 p.m. at the Shilo Inn, Riverview Room, 780 Lindsay Blvd., Idaho Falls, ID 83402

Jackson, WY: Tuesday, December 7, 2004, from 7–9:30 p.m. at the Jackson Hole Middle School, Commons Room, 1230 South Park Loop Road, Jackson, WY 83001

Fort Hall, ID: Wednesday, December 8, 2004, from7–9:30 p.m. at the Fort Hall Tribal Business Center, Tribal Council Chambers, Pima Drive (I–15, Exit 80), Fort Hall Town Site, Fort Hall, ID 83203

Twin Falls, ID: Thursday, December 9, 2004, from 7–9:30 p.m. at the Shilo Inn, Twin Falls B Meeting Room, 1586 Blue Lake Blvd., Twin Falls, ID 83301

Los Alamos, NM: Monday, December 13, 2004, from 6–8:30 p.m. at the Los Alamos Golf Course, Golf Course Main Room, 4250 Diamond Drive, Los Alamos, NM 87544

Oak Ridge, TN: Wednesday, December 15, 2004, from 6–8:30 p.m. at the Oak Ridge Comfort Inn, Magnolia Conference Room, 433 S. Rutgers Ave., Oak Ridge, TN 37830

Washington, DC: Friday, December 17, 2004, from 1–3:30 p.m. at the Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001

ADDRESSES: Comments or suggestions on the scope for the EIS, questions concerning the proposed action, requests to participate at the public scoping meetings, requests for special arrangements that would enable participation at the scoping meetings (*e.g.*, an interpreter for the hearing impaired), and requests to be placed on the EIS distribution list may be directed to: Timothy A. Frazier, Document Manager, NE–50/Germantown Building, Office of Space and Defense Power Systems, Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290, telephone 301–903–9420, or submitted via e-mail to *ConsolidationEIS@nuclear.energy.gov*. You may also leave a message at (800) 919–3716, or send a fax to (800) 919–3765. Comments may also be submitted to DOE via the RPS EIS Web site at *ConsolidationEIS.doe.gov*.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance, Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The RPS is a unique technology for missions that require a long-term, unattended source of heat and/or electrical power for use in harsh and remote environments—such as deep-space. The Pu-238 in these units serves as the source for generating heat and electricity. The heat source can be used directly to warm critical spacecraft components.

Currently, DOE plans to produce RPS in support of Government national security and space exploration missions at three geographically separate and distant DOE sites: the Oak Ridge National Laboratory (ORNL), Tennessee; Los Alamos National Laboratory (LANL), New Mexico; and the Idaho Site, Idaho. DOE proposes to consolidate all nuclear activities of the existing and future RPS production operations at a single, highly secure DOE site. This consolidation would be consistent with DOE's approach on consolidating nuclear materials, increasing the security of nuclear materials, and reducing risks associated with the transportation of nuclear materials.

The nuclear infrastructure required to produce RPS is comprised of three major components: (1) The production of Pu-238; (2) the purification and encapsulation of Pu-238 into a fuel form; and (3) the assembly, testing, and delivery of the RPS to the Federal users. The three major components of the existing infrastructure, including their current status, are briefly described below:

Production of Pu-238: The Pu-238 production process consists of the fabrication of neptunium-237 (Np-237) targets, irradiation of the targets in a suitable irradiation facility, and the recovery of Pu-238 from the irradiated targets through chemical processing. In the past, Pu-238 was produced at DOE's Savannah River Site (SRS), using reactors that are no longer operating. After SRS stopped producing Pu-238, DOE satisfied its Pu-238 requirement by using DOE's available inventory in storage at LANL. This inventory was augmented by Pu-238 purchased from Russia for use in space missions. DOE analyzed the need for reestablishment of Pu-238 production capability in the Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility (NI PEIS) (DOE/EIS–0310), issued in December 2000. On the basis of the analysis in the NI PEIS, DOE issued a Record of Decision (ROD) (66 FR 7877, January 26, 2001) to reestablish Pu-238 production capability at ORNL using the Radiochemical Engineering Development Center (REDC) for the fabrication of targets and extraction of Pu-238 from the irradiated targets. The Advanced Test Reactor (ATR) located at the Idaho National Engineering and Environmental Laboratory (also referred to as the Idaho Site), supplemented by the High Flux Isotope Reactor (HFIR) located at ORNL, would be used in the irradiation of targets, and the irradiated targets would be returned to REDC/ORNL for extraction of Pu-238. This decision, however, has not yet been implemented and the DOE has expended no resources to establish the Pu-238 production at the Oak Ridge Site.

Np-237, the feed material for fabrication of targets for Pu-238 production, had been stored at the SRS where Pu-238 was historically produced. In the NI PEIS ROD, DOE decided to transfer this material to ORNL since the Pu-238 capability was planned to be reestablished there. However, Np-237 is a special nuclear material and, after the events of September 11, 2001, it required a higher level of security than could be reasonably provided at REDC/ORNL. Therefore, DOE amended the ROD for the NI PEIS to change the storage location for Np-237 from ORNL to the Idaho Site (69 FR 50180, August 13, 2004). Np-237, in the form of an oxide, will be shipped from SRS to the Idaho Site beginning in FY 2005 (and ending

in FY 2006) for storage until needed for Pu-238 production.

Purification and Encapsulation of Pu-238: Pu-238 is purified and encapsulated in a metal capsule and welded closed. These fuel capsules are used as a heat source in the RPS. The purification and encapsulation work is currently conducted within the Technical Area-55 (TA–55) complex at LANL. The finished Pu-238 fuel capsules are shipped from LANL for assembly of the RPS at the Idaho Site.

Assembly and Test Operations: From the early 1980s until late-2002, DOE conducted its assembly and test operations for the RPS at the Mound Site in Miamisburg, Ohio. Increased security requirements and concerns resulting from the attacks on September 11, 2001, led DOE to transfer these operations to the Idaho Site to provide enhanced security in a cost effective manner at a highly secure DOE site. The environmental impacts of the transfer from the Mound Site to the Idaho Site were assessed in an Environmental Assessment (DOE/EA–1343). A Finding of No Significant Impact was signed by DOE on August 30, 2002, and the transfer of the assembly and testing capability was initiated. The first RPS will be assembled and tested at the Idaho Site by September 2005 in support of the National Aeronautics and Space Administration's (NASA) planned mission to survey the planet Pluto.

In summary, the current RPS production capability and infrastructure resides at or was planned to reside within the DOE complex at the following different locations:

- Np-237, used in preparation of targets as the feed material for Pu-238 production, was to be transferred and stored at the Idaho Site (amendment to the NI PEIS ROD).
- The production capability was planned to be located at ORNL (NI PEIS ROD) where the targets would be fabricated in REDC, irradiated at ATR in Idaho (supplemented by HFIR in Oak Ridge) and then processed in REDC to recover Pu-238. Pu-238 was then to have been transported to LANL.
- Pu-238 was to be purified and encapsulated in TA–55 at LANL and transported to the Idaho Site.
- RPS assembly and test operations was to be conducted at the Idaho Site.

Purpose and Need for Agency Action

As described above, RPS production infrastructure exists at or is planned for DOE sites in three locations: ORNL, LANL, and the Idaho Site. Consolidation of these operations at a single site would significantly increase security of the nuclear material while reducing risks associated with the transport of radioactive material.

Proposed Action

DOE proposes to consolidate all Pu-238 operations at a single, highly secure site within its complex. These operations include the production of Pu-238, purification and encapsulation of Pu-238, and the assembly and testing of the RPS.

Preliminary Alternatives

Consistent with NEPA implementation requirements, the EIS will assess the range of reasonable alternatives regarding DOE's need to consolidate nuclear operations related to RPS. DOE has identified the following two alternatives for the proposed RPS Production Consolidation Project.

A. *No Action Alternative:* Under the No Action Alternative, DOE would continue the RPS production operations as explained above. The operations would consist of: (1) Np–237 storage at the Idaho Site and shipments to ORNL as needed for target fabrication; (2) Pu-238 production at ORNL using HFIR and ATR (Idaho) for irradiation and processing in REDC located at ORNL; (3) Pu-238 purification and encapsulation in TA–55 facility at LANL; and (4) RPS assembly and test operations at the Idaho Site.

B. *Consolidation of Nuclear Operations Related to Production of RPS at the Idaho Site, the Preferred Alternative:* Under this alternative, DOE would consolidate all activities related to RPS production within the secure area at the Idaho Site. New construction for the Pu-238 production, purification, and encapsulation part of the infrastructure would be required due to the very limited capability of existing facilities in the secure area. No new construction would be required for the assembly and test operations that are already being located in the secure area at the Idaho Site. As previously stated, the consolidation of the RPS production infrastructure would include the following activities: (1) Np-237 would be stored at the Idaho Site as already decided; (2) Pu-238 production capability (including Np–237 target fabrication and processing) would be established at the Idaho Site with ATR serving as the primary irradiation facility, and HFIR would be used only as a back-up facility if necessary; (3) Pu-238 operations carried out at the TA–55 complex at LANL would be transferred to the Idaho Site; and (4) the existing facility, the Space and Security Power Systems Facility, at the Idaho Site would continue to be established and maintained for RPS assembly and test operations as already planned. This area of the Idaho Site where RPS nuclear operations are proposed to be consolidated is a highly secure location within the DOE complex.

C. *Other Reasonable Alternatives:* Any other reasonable alternatives identified through the scoping process will be evaluated as appropriate.

DOE considered whether consolidation at another site is reasonable. The proposed consolidation is not achievable at LANL since there is no operating reactor at the site for irradiation of targets.

Consolidation at ORNL would not allow the DOE to meet its programmatic need. Because the reactor at ORNL, HFIR, is a dedicated facility for projects related to basic energy sciences and isotope production, use of this reactor for the RPS program would only be on an ''as available'' basis and could not be guaranteed. Consolidation at ORNL, therefore, could only partially meet the programmatic objective. Also, as analyzed in the NI PEIS, irradiation of targets in HFIR would be limited due to reactor design and could not produce enough Pu-238 to meet programmatic objectives.

Preliminary Identification of Environmental Issues

The issues listed below have been tentatively identified for analysis in the EIS. This list is presented to facilitate public comment on the scope of the EIS. It is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives. DOE seeks public comments on the adequacy and completeness of the following issues:

- Potential impacts on ecosystems, including air quality, surface, and groundwater quality, and plants and animals.
- Potential health and safety impacts to on-site workers and to the public resulting from operations including reasonably foreseeable accidents.
- Potential health and safety, environmental, and other impacts related to the transport of radioactive materials to the consolidation location.
- Considerations related to the generation, treatment, storage, and disposal of wastes including the potential acceptability of waste at appropriate disposal facilities.
- Potential cumulative impacts of Pu-238 mission operations, including relevant impacts from other past, present, and reasonably foreseeable activities at the consolidation site.
- Potential impacts on cultural resources.

• Potential socioeconomic impacts including any disproportionate impacts on minority and low-income populations.
• Pollution prevention and waste minimization opportunities.

Related NEPA Documentation

NEPA documents that have been prepared for activities related to the proposed action include, but are not limited to, the following:
• Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States including the Role of the Fast Flux Test Facility (DOE/EIS–0310) (December 2000); and
• Environmental Assessment for Consolidation of Heat Source/ Radioisotope Thermoelectric Generator (HS/RTG) Assembly and Testing Operations (DOE/EA–1343) (August 2002).

These NEPA documents (DOE/EIS–0310) and (DOE/EA–1343) are available on the DOE NEPA Web site at *http://www.eh.doe.gov/nepa.*

Public Reading Rooms

Documents referenced in this NOI and other related information are available at DOE-Idaho Operations Office Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83415 (telephone 208–526–0271) and U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E–190,1000 Independence Avenue, SW., Washington, DC 20585–0117 (telephone 202–586–3142). As mentioned above, DOE's NEPA documents, including this NOI, are available at the DOE NEPA Web site (*http://www.eh.doe.gov/nepa*) and the RPS EIS Web site *ConsolidationEIS.doe.gov*.

Public Involvement Opportunities

DOE seeks public involvement in the preparation of the EIS and solicits public comments on its scope and content as well as participation at the public scoping meetings in Idaho, Wyoming, New Mexico, Tennessee, and Washington, DC. DOE personnel will be available at the scoping meetings to explain the proposed project and answer questions. DOE will designate a neutral facilitator for the scoping meetings. During the first hour of each meeting, attendees may register, view displays, and discuss issues and concerns informally with DOE representatives. Following registration and the informal session, there will be a formal presentation and a period for questions, answers, and comments. To ensure that all persons wishing to express their comments are given an opportunity, a five-minute limit may be applied for each person; however, public officials and representatives of groups would be allotted ten minutes each. DOE encourages those presenting comments orally to also submit written comments, if possible.

Comment cards will be available at the meetings for those who prefer to submit their comments in writing. Participants may be asked clarifying questions to ensure that DOE representatives fully understand the comments and suggestions.

NEPA Process

The EIS for the proposed consolidation of nuclear operations related to the production of RPS will be prepared pursuant to the NEPA of 1969, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and DOE NEPA Implementing Procedures (10 CFR Part 1021). A 45-day comment period on the draft EIS is planned, during which public hearings will be held to receive comments. The draft EIS is scheduled to be issued in late spring 2005. Availability of the draft EIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in local news media when the draft EIS is distributed. The final EIS is scheduled to be issued in late 2005. No sooner than 30 days after the U.S. Environmental Protection Agency's notice of availability of the final EIS is published in the **Federal Register**, DOE may issue its ROD.

Issued in Washington, DC on November 10, 2004.

John Spitaleri Shaw,

Acting Assistant Secretary for Environment, Safety and Health.

[FR Doc. 04–25406 Filed 11–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Thursday, December 2, 2004, 6 p.m. to 9 p.m.

ADDRESSES: Broomfield Recreation Center, Lakeshore Room, 280 Lamar Street, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation on the Final Environmental Impact Statement for the Rocky Flats National Wildlife Refuge
2. Presentation on the Draft Rocky Flats Public Participation Plan
3. Discussion on the Future Local Stakeholder Organization

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on November 10, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–25437 Filed 11–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

This notice announces a meeting of the National Petroleum Council. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 1, 2004, 9:30 am.

ADDRESSES: The Ballroom of The Westin Embassy Row Hotel, 2100 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Slutz, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: (202) 586–5600.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

- Call to Order and Introductory Remarks.
- Remarks by the Honorable Spencer Abraham, Secretary of Energy.
- Consideration of the Council's Response to the Secretary's Request for Advice on Petroleum Refining and Inventory Matters.
- Administrative Matters.
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council.
- Adjournment.

Public Participation: The meeting is open to the public, and will begin at 9:30 am and end before noon. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James Slutz at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on November 10, 2004.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 04–25409 Filed 11–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–576–001, FERC–576]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

November 8, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and reinstatement of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 20, 2004 (69 FR 51650–51) and has made this notification in its submission to OMB.

DATES: Comments on the collection of information are due by December 10, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–576–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–576 ''Report by Certain Gas Companies of Service Interruptions.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0004.

The Commission is now requesting that OMB approve with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of this information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Sections 4, 7, 10(a) and 16 of the Natural Gas Act

(NGA). The Commission is authorized to oversee continuity of service in the transportation of natural gas in interstate commerce. The information collected by FERC–576 notifies the Commission in a timely manner of any interruption of service or possible hazard to public health or safety.

The Commission in response to timely notification of a serious interruption may contact other pipelines to determine available supply, and if requested, authorize transportation or construction of facilities to alleviate the problem. The data collected in FERC–576 pertains to serious interruptions of service to any wholesale customer involving facilities operated under certificate authorization from the Commission. The reporting of these interruptions will assist the Commission and the natural gas industry in fulfilling their obligations to the public to provide better service through increased efficiency and reliability. The data required for notification of interruptions is specified by 18 Code of Federal Regulations (CFR) part 260.9.

5. *Respondent Description:* The respondent universe currently comprises 22 natural gas companies (on average per year) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 22 total hours, 22 respondents (average per year), 1 response per respondent, and 1 hour per response (average).

7. *Estimated Cost Burden to Respondents:* 22 hours / 2080 hours per year × $107,185 per year = $1,134.

Statutory Authority: Sections 4, 7, 10 and 16 of the Natural Gas Act (15 U.S.C. 717–717w).

Magalie R. Salas,

Secretary.

[FR Doc. 04–25388 Filed 11–15–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[MN 84; FRL–7838–1]

Notice of Final Determination for Rochester Public Utilities' Silver Lake Plant in Rochester, MN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on August 3, 2004, the Environmental Appeals Board (EAB) of the EPA dismissed a petition for review of a permit issued for the Rochester Public Utilities' Silver Lake Plant (RPU) by the Minnesota Pollution Control Agency (MPCA). The EAB dismissed the petition because it determined that MPCA did not need to require best available control technology (BACT) for the permitted major modification.

DATES: The effective date for the EAB's decision is August 3, 2004. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), may be sought by filing a petition for review in the United States Court of Appeals for the Eighth Circuit within 60 days of November 16, 2004.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Jennifer Darrow at (312) 886–6315.

FOR FURTHER INFORMATION CONTACT: Jennifer Darrow, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604 or *darrow.jennifer@epa.gov.* Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/disk11/rochester.pdf.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action Is EPA Taking?

We are notifying the public of a final decision by EPA's EAB on a permit issued by MPCA.

B. What Is The Background Information?

On June 27, 2003, MPCA issued a Prevention of Significant Deterioration (PSD) permit (permit number 10900006–007) to RPU to construct and operate an underground high-pressure steam line from its Silver Lake Plant to the Mayo Clinic's Prospect Utility Plant (Mayo Plant). The permit allows RPU to tap into existing steam lines at the Silver Lake Plant that currently provide steam for four boilers; and to route that steam through a single pipeline to provide steam to the Mayo Plant. This change does not alter the boilers themselves, but results in annual burning of approximately 73,700 additional tons of coal at RPU. MPCA determined that this project would constitute a ''major modification'' subject to PSD. MPCA did not require the use of BACT, determining that there would not be a modification to an ''emissions unit.''

The Minnesota Center for Environmental Advocacy (MCEA) filed a petition for review of this permit with the EAB on July 24, 2003. MCEA argued that the term ''emissions unit'' encompasses the steam lines as well as the boilers, based on a change to the regulatory definition of ''emissions unit'' in revisions to the PSD regulations promulgated at 67 FR 80186 (December 31, 2002). MCEA further argued that MPCA erred by not requiring BACT under this revised definition.

C. What Did the EAB Determine?

On August 3, 2004, the EAB dismissed the petition for review on the grounds that the revised PSD regulations did not change the meaning of ''emissions unit,'' and therefore did not make it necessary for MPCA to require BACT.

Dated: October 26, 2004.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. 04–25399 Filed 11–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0033; FRL–7686–9]

Rodenticides; Availability of Revised Comparative Ecological Risk Assessment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** on September 22, 2004, titled ''Rodenticides; Availability of Revised Comparative Ecological Risk Assessment.'' This notice extends the closing date of the comment period announced in that notice by 60 days, from November 22, 2004, to January 21, 2005.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0033, must be received on or before January 21, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions asprovided in Unit I of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kelly White, Special Review and Reregistration Division (7508C), Office of Pesticide Programs,Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–

0001; telephone number: (703) 305–8401; e-mail address: *white.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0033. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket doesnot include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 22, 2004 **Federal Register** document (69 FR 56756) (FRL–7675–4). If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of September 22, 2004 (69 FR 56756) (FRL–7675–4). In that document, EPA announced the availability of the revised comparative ecological risk assessment and related documents for nine rodenticides, and opened a 60–day comment period. EPA received many requests for additional time to comment, and therefore is extending the comment period by an additional 60 days. The comment period, which wasoriginally set to end on November 22, 2004, will now close on January 21, 2005.

III. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 1, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–25400 Filed 11–15–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010776–126.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; Hapag-Lloyd Container Line GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; A. P. Moller-Maersk A/S; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; and P&O Nedlloyd Limited.

Filing Party: David F. Smith, Esquire; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The modification extends the suspension of the conference through May 1, 2005.

Agreement No.: 011695–008.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A. and Norasia Container Lines Limited.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway, Suite 3000; New York, NY 10006–2802.

Synopsis: The proposed modification would convert the agreement from a cross space charter agreement to a slot charter agreement with CMA CGM giving space to Norasia. The parties request expedited review.

Agreement No.: 201163.

Title: Port of Portland/Port of Vancouver Intergovernmental Cooperation Agreement.

Parties: The Port of Portland, an Oregon Port District; and The Port of Vancouver, USA, a Washington Port District.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW.; Washington, DC 20036.

Synopsis: The proposed agreement would authorize the parties to engage in joint marketing activities and joint facility development in accordance with a stated cost and revenue sharing formula. The parties request expedited review.

Dated: November 10, 2004.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–25435 Filed 11–15–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Great Financial Corporation, Miami Lakes, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Great Florida Bank, Miami, Florida.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Western Transaction Corporation, Duluth, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Western National Bank, Duluth, Minnesota, and Cass Lake Company, Cass Lake, Minnesota, and thereby indirectly acquire voting shares of First National Bank of Cass Lake, Cass Lake, Minnesota.

In connection with this application, Applicant also has applied to acquire Premier Credit Corporation, Duluth, Minnesota, and thereby engage in operating an industrial loan company and to engage directly in general insurance agency activities in a town with a population not exceeding 5,000, pursuant to sections 225.28(b)(4)(i) and (b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 9, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25387 Filed 11–15–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Civitas BankGroup, Inc., Franklin, Tennessee; to engage *de novo* through its subsidiary, Civitas Management Company, Inc., Franklin, Tennessee, in making, acquiring, brokering, or servicing loans or other extensions of credit, and to engage in activities related to extending credit, pursuant to sections 225.28(b)(1) and (b)(2)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, November 9, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.04–25386 Filed 11–15–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, November 22, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, November 12, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–25528 Filed 11–12–04; 3:11 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer

rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 12% for the quarter ended September 30, 2004. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of the change.

Dated: November 8, 2004.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 04–25357 Filed 11–15–04; 8:45 am]

BILLING CODE 4150–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Low Income Home Energy Assistance Program (LIHEAP) Grantee Survey.

OMB No.: 0970–0076.

Description: The LIHEAP Grantee Survey is an annual data collection activity, which is sent to the 50 States and the District of Columbia grantees administering the Low Income Home Energy Assistance Program (LIHEAP). The survey is mandatory in order that national estimates of the sources and uses of LIHEAP funds can be calculated in a timely manner; a range can be calculated of state average LIHEAP benefits; and maximum income cutoffs for 4-person households can be obtained for estimating the number of low-income households that are income eligible for LIHEAP under State income standards.

Respondents: 50 States and the District of Columbia.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey	51	1	3.4	173.4

Estimated Total Annual Burden Hours: 173.4.

Additional Information: The need for the survey is to provide the Administration and Congress with fiscal estimates in time for hearings about LIHEAP appropriations and program performance. The information also is included in the Department's annual LIHEAP Report to Congress. Survey information also will be posted on Office of Community Services LIHEAP web site for access by grantees and other interested parties.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All request should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, e-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: November 9, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–25341 Filed 11–15–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004P–0051]

Determination That DYCLONE (Dyclonine Hydrochloride) 0.5% and 1.0% Topical Solutions Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that DYCLONE (dyclonine hydrochloride (HCl)) 0.5% and 1.0% Topical Solutions were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for DYCLONE HCl 0.5 and 1.0% Topical Solutions.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

DYCLONE (dyclonine HCl) 0.5% and 1.0% Topical Solutions were the subject of approved NDA 9–925 held by AstraZeneca LP. DYCLONE Topical Solutions were labeled for anesthetizing accessible mucus membranes prior to various endoscopic procedures. DYCLONE 0.5% Topical Solution was also labeled to block the gag reflex, to relieve the pain of oral ulcers or stomatitis, and to relieve pain associated with ano-genital lesions.

In a citizen petition dated February 3, 2004 (Docket No. 2004P–0051/CP1), submitted under 21 CFR 10.25(a) and 10.30, Arent Fox, PLLC, requested that the agency determine whether DYCLONE (dyclonine HCl) 0.5% and 1.0% Topical Solutions were withdrawn from the market for reasons of safety or effectiveness. In the **Federal Register** of February 11, 2002 (67 FR 6264), FDA withdrew approval of NDA 9–925 for DYCLONE 0.5% and 1.0% Topical Solutions after AstraZeneca notified the agency that DYCLONE was no longer being marketed under NDA 9–925 and requested withdrawal of that application.

The agency has determined that DYCLONE 0.5% and 1.0% Topical Solutions were not withdrawn from sale for reasons of safety or effectiveness. The petitioner identified no data or other information suggesting that DYCLONE was withdrawn from sale as a result of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate that these products were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA determines that, for the reasons outlined in this notice, dyclonine HCl 0.5% and 1.0% topical solutions approved under NDA 9–925 were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list DYCLONE (dyclonine HCl) 0.5% and 1.0% Topical Solutions in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to DYCLONE (dyclonine HCl) 0.5% and 1.0% Topical Solutions may be approved by the agency.

Dated: November 8, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–25332 Filed 11–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Free Clinic—FTCA Deeming Application (OMB No. 0915–0293)—Extension

Congress legislated FTCA medical malpractice protection for free clinic volunteer health professionals through section 194 of the Health Insurance Portability and Accountability Act (HIPAA) amending Section 224 of the Public Health Service Act. Individuals eligible to participate in this program are health care practitioners volunteering at free clinics who meet specific eligibility requirements. If an individual meets all the requirements of this program they can be ''deemed'' to be a Federal employee. This deemed status is specifically to provide immunity from medical malpractice lawsuits as a result of the performance of medical, surgical, dental, or related activities within the scope of the volunteer's work at the free clinic.

The sponsoring free clinic entity must submit an application to the Health Resources and Services Administration (HRSA). This application will require information about the sponsoring free clinic's credentialing system, risk management practices, and quality assurance system in order to ensure the Government is not exposed to undue liability resulting from the medical malpractice coverage of non-qualified health care professionals. Attached to the application will be a listing of specific health care providers for whom the sponsoring free clinic is requesting deemed status.

Estimates of annualized reporting burden are as follows:

Type of form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
FTCA Deeming Application	600	1	600	5	3,000
Total	600		600		3,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 8, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–25403 Filed 11–15–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: December 8–10, 2004.

Time: 7 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel and Conference Ctr., 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., 8th Floor, Bethesda, MD 20892–8328, (301) 496–9767, *wm63f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25345 Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee C—Basic & Preclinical.

Date: December 8–10, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel and Conference Ctr., 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892, (301) 402–0996, *smallm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25350 Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Research Project Cooperative Agreements (U01s).

Date: December 9, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Keith A. Mintzer, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7186, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.389, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25349 Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel MBRS Support of Continuous Research Excellence.

Date: December 1, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, (301) 594–2771, *johnsonrh@nigms.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25344 Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.

Date: November 30, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (telephone conference call).

Contact Person: Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.

Date: December 7, 2004.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (telephone conference call).

Contact Person: Paul A. Coulis, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 443–2105.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25347 Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Enhancing State Capacity To Foster Adoption Of Science-Based Practices.

Date: December 2, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Minority Institutions Drug Abuse Research Development Program (MIDARP).

Date: December 6, 2004.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 200, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25348 Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Microbicide Design and Development Teams.

Date: December 1, 2004.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 435–2766, *gm145@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25351 Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Psychometric (IRT) Models for Clinical Studies.

Date: December 1, 2004.

Time: 3:43 p.m. to 5:20 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (telephone conference call).

Contact Person: Mark Czarnolewsi, PhD, Scientific Review Administrator, Division of Extramural Activities, Neuroscience Center, 6001 Executive Blvd., Room 8122, MSC 9667, Bethesda, MD 20892–9667, (301) 435–4582, *mczarnol@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientists Development Award, Scientist Development Award for Clinicians, and Research Scientists Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25352] Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review NAED Member Conflict Applications.

Date: November 11, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Environmental Toxicology.

Date: November 12, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Lee S. Mann, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *mannl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AMCB Member Conflicts.

Date: November 18, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review NAED Member Conflict Applications.

Date: November 23, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EMNR G (02) Diabetes and Obesity.

Date: November 24, 2004.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Abubakar A. Shaikh, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AOIC Member Conflicts.

Date: November 24, 2004.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel High Resolution Electron Microscopy.

Date: November 29, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Neural Engineering.

Date: December 1, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Lafayette Square Washington, 806 15th Street, NW., Washington, DC 20005.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Pelvic Floor Physiology.

Date: December 1, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, (301) 496–8551, *langubm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–03–137 Topical Microbicides.

Date: December 8–10, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 ONC F (02) Gene Expression.

Date: December 13, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719, *litwackm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict—Neurogenesis.

Date: December 14, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pharmacogenetics and Bioinformatics.

Date: December 14–15, 2004.

Time: 5 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–4511, *whitmarshb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Angiotensin Receptors.

Date: December 17, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (telephone conference call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RUS–E (02) Renal Urology Special Member Conflicts Meeting.

Date: December 20, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Aftab A. Ansari, PhD, Health Scientist Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–1173, *ansaria@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 8, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–25346 Filed 11–15–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

National Survey on Drug Use and Health: Clinical Validation Study of the Substance Dependence and Abuse Measures—(OMB No. 0930–0231)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse, is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy, other Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

From 2001–2004, the NSDUH conducted the first phase (phase 1) of a two-phase Clinical Validation Study of the Substance Dependence and Abuse Measures. From 2005–2007 the NSDUH plans to conduct the second phase (Phase 2) of this study. Specific aims of the two-phase study are to achieve the best overarching format, and the best wording and ordering for the assessment questions. The goal is improved validity and reduced respondent burden.

In phase 1 a field test was conducted. Half of all subjects in this field test were between 12 and 17, and half 18 years of age or older; subjects were recruited from the Research Triangle and the Triad areas of North Carolina through fliers and newspaper ads, and asked (1) demographic information and (2) questions from two self-administered sections of the NSDUH questionnaire: questions about the quantity and frequency of use of drugs and alcohol, and questions about symptoms of substance dependence and abuse. A semi-structured clinical interview was administered to these same subjects by a trained clinician to determine the presence or absence of substance dependence and abuse. The clinical instruments used to assess subjects were the substance abuse modules from the Structured Clinical Interview for DSM–IV (SCID) (for adults) and the Kiddie Schedule for Affective Disorders and Schizophrenia (K–SADS) (for those between 12 and 17 years of age). The correspondence of the diagnosis of substance dependence and abuse between the clinical and survey interview were compared.

The results of this comparison from the field test in phase 1 indicated a lack of sufficient correspondence between the clinical and survey interview. Overall there was a strong tendency toward over reporting in the survey interview. Recommendations were made to revise specific questions. Problems with specific questions were identified and reasons for lack of correspondence were examined. Modifications to the NSDUH questions on substance dependence and abuse to achieve better correspondence are being made for phase 2 of the study. In order to reduce a tendency to over report some questions have been revised to be more specific.

In Phase 2, a second clinical validation study will be conducted using the same procedures as Phase 1 but with the revised questions on dependence or abuse. This will allow a determination of the correspondence (kappa) between the revised diagnosis obtained from the NSDUH substance dependence and abuse module and the diagnosis from the structured clinical interviews. Final revisions to the survey instrument will be made based on findings from Phase 2. All decisions about final revisions to the module will balance the need for correspondence across different groups. The following table summarizes the burden associated with phase two of the project.

Phase II	Number of respondents	Responses per respondent	Hours per response	Total burden
Adults:				
Screening	400	1	.08	32
Screener and interview	200	1	1.5	300
Adolescents:				
Screening	200	1	1.5	300
Screener and interview	170	1	1.50	255
Total	370	.....	.....	887

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by January 18, 2005.

Dated: November 9, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–25365 Filed 11–15–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19591]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0005, 1625–0020, 1625–0029, 1625–0031, 1625–0085, and 1625–0096

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal or revision of six Information Collection Requests (ICRs). The ICRs comprise (1) 1625–0005, Application and Permit to Handle Hazardous Materials; (2) 1625–0020, Security Zones, Regulated Navigation Areas, and Safety Zones; (3) 1625–0029, Self-propelled Liquefied Gas Vessels; (4) 1625–0031, Plan Approval and Records for Electrical Engineering Regulations—title 46 CFR subchapter J; (5) 1625–0085, Streamlined Inspection Program; and (6) 1625–0096, Report of Oil or Hazardous Substance Discharge, and Report of Suspicious Maritime Activity. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before January 18, 2005.

ADDRESSES: To make sure that your comments and related material do not

enter the docket [USCG–2004–19591] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Bernice Parker-Jones), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice Parker-Jones, Office of Information Management, 202–267–2326, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–19591], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Requests

1. *Title:* Application and Permit to Handle Hazardous Materials.

OMB Control Number: 1625–0005.

Summary: The information sought here ensures the safe handling of explosives and other hazardous materials around ports and aboard vessels.

Need: Title 33 United States Code 1225 authorizes the Coast Guard to establish standards for the handling, storage, and movement of hazardous materials on a vessel and/or waterfront facility. Title 33 Code of Federal Regulations (CFR) 126.17, and 49 CFR 176.100 and 176.415, prescribe the rules for facilities and vessels.

Respondents: Shipping agents and terminal operators that handle hazardous materials.

Frequency: On occasion.

Burden Estimate: The estimated burden is 145 hours a year.

2. *Title:* Security Zones, Regulated Navigation Areas, and Safety Zones.

OMB Control Number: 1625–0020.

Summary: The Coast Guard collects this information only when someone seeks a security zone, regulated navigation area, or safety zone. It uses the information to assess the need to establish one of these areas.

Need: The Coast Guard Captains of the Port (COTPs), under 33 U.S.C. 1226, 50 U.S.C. 191, and 33 CFR parts 6 and 165 , are authorized to designate security zones in the U.S. for as long as they are deemed necessary to prevent damage or injury. Title 33 U.S.C. 1223 authorizes the Coast Guard to prescribe rules to control vessel traffic in areas he or she deems hazardous because of reduced visibility, adverse weather, or vessel congestion. Title 33 U.S.C. 1225 authorizes the Coast Guard to establish rules to allow the designation of safety zones where access is limited to authorized persons, vehicles, or vessels to protect the public from hazardous situations.

Respondents: Federal, State, and local government agencies, vessels and facilities.

Frequency: On occasion.

Burden Estimate: The estimated burden is 194 hours a year.

3. *Title:* Self-propelled Liquefied Gas Vessels.

OMB Control Number: 1625–0029.

Summary: We need the information sought here to ensure compliance with our rules for the design and operation of liquefied gas carriers.

Need: Title 46 U.S.C. 3703 and 9101 authorizes the Coast Guard to establish regulations to protect life, property, and the environment from the hazards associated with the carriage of dangerous liquid cargo in bulk. Title 46 CFR part 154 prescribes these rules for the carriage of liquefied gases in bulk on self-propelled vessels by governing the design, construction, equipment, and operation of these vessels and the safety of personnel aboard them.

Respondents: Owners and operators of self-propelled vessels carrying liquefied gas.

Frequency: On occasion.

Burden Estimate: The estimated burden is 5,416 hours a year.

4. *Title:* Plan Approval and Records for Electrical Engineering Regulations—Title 46 CFR Subchapter J.

OMB Control Number: 1625–0031.

Summary: The information sought here is needed to ensure compliance with our rules on electrical engineering for the design and construction of U.S.-flag commercial vessels.

Need: Title 46 U.S.C. 3306 and 3703 authorize the Coast Guard to establish rules to promote the safety of life and property in commercial vessels. The electrical engineering rules appear at 46 CFR Subchapter J (parts 110 to 113).

Respondents: Owners, operators, and builders of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 1,151 hours a year.

5. *Title:* Streamlined Inspection Program.

OMB Control Number: 1625–0085.

Summary: The Coast Guard established an optional Streamlined Inspection Program (SIP) to provide owners and operators of U.S. vessels an alternative method of complying with inspection requirements of the Coast Guard.

Need: Owners and operators of vessels opting to participate in the program will maintain a vessel in compliance with a Company Action Plan (CAP) and Vessel Action Plan (VAP) and have their own personnel periodically perform many of the tests and examinations conducted by marine inspectors of the Coast Guard. The Coast Guard expects that participating vessels will continuously meet a higher level of safety and readiness throughout the inspection cycle.

Respondents: Owners and operators of vessels.

Frequency: On occasion. Application and plan development occur only once at enrollment. Updates and revisions are required to be made every 2 years. The Officer in Charge, Marine Inspection (OCMI) and the company will review the plans every 5 years.

Burden Estimate: The estimated burden is 2,138 hours a year.

6. *Title:* Report of Oil or Hazardous Substance Discharge; and Report of Suspicious Maritime Activity.

OMB Control Number: 1625–0096.

Type of Request: Revision of currently approved collection.

Summary: Any discharge of oil or a hazardous substance must be reported to the National Response Center (NRC) so that the pre-designated on-scene coordinator can be informed and appropriate spill mitigation action carried out. The NRC also receives suspicious maritime activity reports from the public and disseminates the info to appropriate entities.

Need: Titles 33 CFR 153.203, 40 CFR 263.30 and 264.56, and 49 CFR 171.15 mandate that the National Response Center be the central place to report all pollution spills by the public. Title 33 CFR 101.305 mandates that owners or operators of vessels or facilities required to have security plans report suspicious maritime activities that may result in a Transportation Security Incident (TSI) and breaches of security to the National Response Center. Voluntary reports are also accepted.

Respondents: Persons-in-charge of a vessel or an onshore or offshore facility; owners or operators of vessels or facilities required to have security plans; and the public.

Frequency: On occasion.

Burden Estimate: The estimated burden is 9,105 hours a year.

Dated: November 9, 2004.

David McLeish,

Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 04–25414 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1561–DR]

Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

EFFECTIVE DATE: November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2004:

Leon and Wakulla Counties for Public Assistance.

Sarasota County for Public Assistance [Categories A, C–G] (already designated for emergency protective measures [Category B] under the Public Assistance program and Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25380 Filed 11–15–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1554–DR]

Georgia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1554–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2004:

Clay and Stephens Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations;

97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25377 Filed 11–15–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1538–DR]

Pennsylvania; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1538–DR), dated August 6, 2004, and related determinations.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Thomas Davies as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25376 Filed 11–15–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1555–DR]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1555–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Thomas Davies as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25378 Filed 11–15–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Thomas Davies as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–25379 Filed 11–15–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Immigration and Customs Enforcement

[ICE No. 2338–04]

Senior Executive Service Performance Review Board

AGENCY: Immigration and Customs Enforcement, DHS.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Immigration and Customs Enforcement Performance Review Board (PRB).

DATES: This notice is effective November 16, 2004. Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Michele L. Burton, Director, Executive Services, Office of Human Resources Management, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 2.4–E, Washington, DC 20229. Telephone (202) 344–2525.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4314(c) requires each federal agency to establish one or more performance review boards to make recommendations, as necessary, in regard to the performance of senior executives within the agency. The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service (SES) positions for which the Assistant Secretary, U.S. Immigration and Customs Enforcement (ICE), is the appointing authority. The Board will perform PRB functions for other Department of Homeland Security SES positions if requested.

This notice does not constitute a significant regulatory action as are defined under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget.

Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Composition of Agency PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members are as follows:

David V. Aguilar, Chief, Border Patrol, U.S. Customs and Border Protection;

Dea Doris Carpenter, Deputy General Counsel, U.S. Citizenship and Immigration Services;

Joseph D. Cuddihy, Director, International Operations, U.S. Citizenship and Immigration Services;

Joseph E. Langlois, Director, Asylum, U.S. Citizenship and Immigration Services;

Janis A. Sposato, Deputy Associate Director of Operations, U.S. Citizenship and Immigration Services;

Terrance M. O'Reilly, Director, Office of Field Operations, U.S. Citizenship and Immigration Services.

The following SES executives are from U.S. Immigration and Customs Enforcement:

Marcy M. Forman, Director, Office of Investigations;

Wendell C. Shingler, Director, Federal Protective Service;

Paul E. Ladd, Counselor to the Assistant Secretary, Finance and Management;

Richard F. Mercier, Special Assistant to the Deputy Assistant Secretary; and

Robert W. Weber, Director, Office of Professional Responsibility.

Dated: November 9, 2004.

John P. Clark,

Deputy Assistant Secretary, Immigration and Customs Enforcement.

[FR Doc. 04–25334 Filed 11–15–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–92]

Notice of Submission of Proposed Information Collection to OMB; Analysis of Proposed Main Construction Contract

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for continued approval to collect information from Title I Lenders applying for access to the Automated Clearing House (ACH) Program for electronic premium payment for the Title I Mortgage Insurance Program.

DATES: *Comments Due Date:* December 16, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0512) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for access to the Automated Clearing House (ACH).

OMB Approval Number: 2502–0512.

Form Numbers: HUD–56150.

Description of the Need for the Information and its Proposed Use: This is a request for continued approval to collect information from Title I Lenders applying for access to the Automated Clearing House (ACH) Program for electronic premium payment for the Title I Mortgage Insurance Program.

Frequency Of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,406	147		0.2		29.4

Total Estimated Burden Hours: 29.4.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 8, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–3179 Filed 11–15–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–09; HUD–2004–0005]

Changes in Certain Multifamily Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with HUD regulations, this notice changes the mortgage insurance premiums (MIP) for the section 221(d)(4) and the section 232 Federal Housing Administration (FHA) mortgage insurance programs whose commitments will be issued in Fiscal Year (FY) 2005.

DATES: *Effective Date:* December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, (202) 708–1142 (this is not a toll-free number). Hearing-or speech-impaired individuals may access these numbers through TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

On March 17, 2003 (68 FR 12792), HUD published a final rule on ''Mortgage Insurance Premiums in Multifamily Housing Programs,'' which adopted, without change, the interim rule published on July 2, 2001 (66 FR 35072). The final and interim rule revised the regulatory system for establishing the MIP. Instead of setting the MIP at a specific rate, the Secretary is permitted to change an MIP within the full range of HUD's statutory authority of one fourth of one percent to one percent through a notice, as provided in section 203(c)(1) of the National Housing Act (the Act) (12 U.S.C. 1709(c)(1)). The final rule states that HUD will provide a 30-day period for public comment on future notices changing MIPs in multifamily insured housing programs. These regulations are codified at 24 CFR 207.252, 207.252a, and 207.254.

Pursuant to these regulations, on August 23, 2004, HUD published a notice for public comment announcing a change in the MIP for programs authorized under sections 221(d)(4), 232, and 241(a)(for health care facilities) of the National Housing Act for FY 2005 (12 U.S.C. 1715l(d)(4), 1715w, and 1715z-6 respectively). No comments were received, and therefore this notice is made final without change.

Dated: November 4, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E4–3165 Filed 11–15–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4922–N–04]

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the establishment of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the Department of Housing and Urban Development (HUD) is giving notice that it proposes to establish a new system of records entitled ''Compliance Investigation and Enforcement Files (CIEF)'' that will be used in performing compliance assistance and enforcement under the statutory jurisdiction of the Office of Healthy Homes and Lead Hazard Control (OHHLHC), and in supporting other administrative requirements related to the responsibilities of the Office.

CIEF facilitates more timely, accurate processing and use of this information to protect the health of children as well as to ensure compliance with applicable Federal statutes and regulations. CIEF contains: Residential property information; residential lease information; associated owner and/or agent information; documents related to lead-based paint and lead-based paint hazards, inspection reports, risk assessment reports, clearance tests, and associated disclosures and notifications; local housing code violation information; number of child lead-poisoning reports for a property; source of referral; and consent agreements and administrative settlements, and the associated monitoring of these agreements. CIEF also tracks the progress of the enforcement investigation.

System Security Measures: The integrity and availability of data in CIEF are important. Much of the data needs to be protected from unanticipated or unintentional modification. HUD restricts the access of this information to HUD approved officials and its agents. In addition, HUD has various system protocols in place to maintain data integrity, including: Virus protection software; daily data backups; and other documented procedures.

Vulnerabilities and corresponding security measures include: (1) Unauthorized access is reduced by restricting access to specified user identifications (User IDs) and passwords; and (2) during routine checking, or upon valid request, inaccurate and incomplete data are identified and corrected. Paper documents are stored in file cabinets and are handled in accordance with standard HUD procedures.

Data Quality: Residential property and owner/agent information is submitted to OHHLHC in electronic or paper format. CIEF will verify whether

or not the information already exists in CIEF. If the property information does exist in CIEF, but is actively associated with another owner/agent, an error message will appear stating that the property, or the property and owner/agent association currently exists in CIEF. Information will be archived electronically for the database and physically for paper records when an active case or consent decree is closed or after seven years, whichever is earlier.

DATES: *Effective Date:* This proposal shall become effective without further notice on December 16, 2004, unless comments are received on or before that date which would result in a contrary determination.

Comments Due Date: December 16, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Comments submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act Information: Jeanette Smith, Departmental Privacy Act Officer, telephone number (202) 708–2374. For OHHLHC, Compliance Investigation and Enforcement Files, Walter D. Wynn, telephone number (202) 755–1785, ext. 148. (These are not toll-free numbers.) A telecommunications device for hearing and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records identified as HUD/OHHLH–1, the Compliance Investigation and Enforcement Files (''CIEF'') of the Office of Healthy Homes and Lead Hazard Control (OHHLHC).

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record systems. The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Government Reform and Oversight and the House of Representatives Committee on Governmental Affairs pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25, 1994, 59 FR 37914.

Accordingly, this notice establishes a new system of records and accompanying routine uses to be created during the compliance assistance and enforcement process in HUD's Office of Healthy Homes and Lead Hazard Control.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: November 8, 2004.

Carolyn Cockrell,

Acting Chief Technology Officer.

HUD/OHHLHC–1

SYSTEM NAME:

Compliance Investigation and Enforcement Files of the Office of Healthy Homes and Lead Hazard Control (''CIEF'').

SYSTEM LOCATION:

Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals included in the system with respect to residential properties include: Owners, managers, agents, and landlords; potential purchasers; and prospective and actual tenants. Categories of individuals included in the system with respect to referrals of concerns include: tips or complaints that are not anonymous, EPA, local government agencies (*e.g.*, health departments and building code enforcement agencies), not for profit organizations interested in protecting the rights and health of tenants, and the HUD Inspector General. Categories of individuals included in the system with respect to investigation of properties include: HUD employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of the following information pertaining to the owner, manager and agent: Name, title, address, telephone number, fax number, e-mail address, company name, corporate registration number, and corporate registered agent name. Records also include: Property information, residential lease information, documents related to lead-based paint and lead-based paint hazards, inspection reports, risk assessment reports, clearance tests, and associated disclosures and notifications, local housing code violation information, number of child lead-poisoning reports for a property, source of referral, consent agreements and administrative settlements, and the associated monitoring of these agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

HUD is charged with ensuring proper disclosure of information concerning lead upon transfer of residential property, whether by sale or lease, under 42 U.S.C. 4852(d). HUD has authority to promulgate regulations to enforce the statutory requirements under 42 U.S.C. 4852d(a)(1) and (2). HUD's statutory authority to enforce its regulations are found at 42 U.S.C. 4852d(a)(5) and (b). Additionally, HUD is charged with establishing procedures to eliminate the hazards of lead-based paint in any housing receiving Federal assistance under 42 U.S.C. 4822(a). 24 CFR part 35 contains the implementing regulations promulgated pursuant to the statutes.

PURPOSES:

The primary purpose of CIEF is to enable OHHLHC to complete its statutory responsibility to ensure compliance with the Lead Disclosure Rule 24 CFR 35, subpart A, and the Lead Safe Housing Rule 24 CFR part 35, subparts B–R. The lead disclosure is to occur before a lessee or buyer is obligated under a lease or sale agreement. The only way to verify disclosure is to evaluate the documentation that memorializes these transactions and the parties involved. Since knowledge is an integral aspect of disclosure, any documentation regarding knowledge of lead (*e.g.*, lead-based paint inspections, lead-based paint inspections risk assessments, hazard reduction activities, local abatement orders or notices of code violations, etc.) is necessary for verifying what and when the owner or his agent knew or should have known.

In the case of federally assisted housing, the owner or designated party is required to perform some type of inspection and attendant abatement action. The regulations require ongoing activities until all lead-based paint is removed, including use of lead safe work practices and notification of tenants regarding all of these activities.

If an OHHLHC investigation indicates a violation or potential violation of the lead disclosure rule, relevant documents may be disclosed to the appropriate Federal, state or local authority for investigation or enforcement of the applicable laws and regulations. If an OHHLHC investigation indicates a violation or potential violation of the lead safe housing rule, relevant documents may be disclosed to the appropriate program office or Enforcement Center for investigation or enforcement of the applicable laws and regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. Records may be disclosed to individuals under contract, cooperative agreement, or working agreement with HUD to assist the Department in fulfilling its statutory lead disclosure responsibilities.

2. Records may be disclosed during the course of an administrative proceeding where HUD or other federal agency is a party, to the Administrative Law Judge and the interested parties to the extent necessary for conducting the proceeding.

3. Records may be disclosed to the Department of Justice for litigation purposes associated with the representation of HUD or other Federal agency before the courts.

4. Records may be disclosed to a confidential source to the extent necessary to assist the Office of Inspector General in an investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically in computers and in hard copy format in file cabinets or other secure storage units.

RETRIEVABILITY:

Records may be retrieved by manual or computer search by the name of the property owner, manager, or agent.

SAFEGUARDS:

Records are maintained in a secure computer network, and in locked file cabinets in rooms with controlled access.

RETENTION AND DISPOSAL:

Information will be archived electronically for the database and physically for paper records when an active case or consent is closed or after seven years, whichever is earlier. Documents referred to HUD's OIG will become part of the OIG Investigative Files. Records will be retained and disposed of in accordance with the General Records Schedule included in HUD Handbook 2228.2, appendix 14, items 21–26.

SYSTEM MANAGER AND ADDRESS:

Walter D. Wynn, Office of Healthy Homes and Lead Hazard Control, 451 7th Street, SW., Suite P–7110, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to the Project Manager of OHHLHC–CIEF, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Suite P–7110, Washington, DC 20410. Written requests must include the full name, current address, and telephone number of the individual making the request, including a description of the requester's relationship to the information in question. The System Manager will accept inquiries from individuals seeking notification of whether the system contains records pertaining to them.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information may be collected from a wide variety of sources, including from HUD, other Federal, state, Indian tribal, and local agencies, program participants, subject individuals, complainants, witnesses and other non-government sources.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E4–3164 Filed 11–15–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meetings of the Pinedale Anticline Working Group's Cultural and Historic Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Cultural and Historic Task Group (subcommittee) will meet in Pinedale, Wyoming, for two business meetings. Task Group meetings are open to the public.

DATES: The PAWG Cultural and Historic Task Group will meet December 9, 2004, and January 10, 2005. Both meetings will begin at 5 p.m. and adjourn around 8 p.m.

ADDRESSES: The meetings of the PAWG Cultural and Historic Task Group will be held in the conference room of the BLM Pinedale Field Office at 432 E. Mill St., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Dave Vlcek or Kierson Crume, BLM/Cultural and HistoricTG Liaisons, Bureau of Land Management, Pinedale Field Office, 432 E. Mill St., Pinedale, WY, 82941, or P.O. Box 768, Pinedale, WY, 82941; 307–367–5327 or 307–367–5343.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003 (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups, including one for Cultural/Historic/Visual Resources. Public participation on the Task Groups was solicited through the media, letters, and word-of-mouth. At their third business meeting, the PAWG determined that visual resources will not be addressed by this Task Group.

The agenda for these meetings will include information gathering and discussion related to developing (a) cultural and historic monitoring plan(s) to assess the impacts from development in the Pinedale Anticline gas field on cultural and historic resources in the

field, mitigation opportunities, and identifying who will do and who will pay for the monitoring. Task Group recommendations are due to the PAWG in February, 2005. At a minimum, public comments will be heard just prior to adjournment of the meeting.

Dated: November 8, 2004.

Priscilla E. Mecham,

Field Office Manager.

[FR Doc. 04–25373 Filed 11–15–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group's Air Quality Task Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) Air Quality Task Group (subcommittee) will meet in Pinedale, Wyoming, for a business meeting. Task Group meetings are open to the public.

DATES: The PAWG Air Quality Task Group will meet November 30, 2004, from 10 a.m. until 5 p.m.

ADDRESSES: The meeting of the PAWG Air Quality Task Group will be held in the conference room of the BLM Pinedale Field Office at 432 E. Mill St., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Susan Caplan, BLM/Air QualityTG Liaison, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Rd., Cheyenne, WY 82009, or PO Box 1828, Cheyenne, WY 82003; 307–775–6031.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field (PAPA) proceeds for the life of the field.

After the ROD was issued, Interior determined that a Federal Advisory Committees Act (FACA) charter was required for this group. The charter was signed by Secretary of the Interior, Gale Norton, on August 15, 2002, and renewed on August 13, 2004. An announcement of committee initiation and call for nominations was published in the **Federal Register** on February 21, 2003 (68 FR 8522). PAWG members were appointed by Secretary Norton on May 4, 2004.

At their second business meeting, the PAWG established seven resource- or activity-specific Task Groups, including one for Air Quality. Public participation on the Task Groups was solicited through the media, letters, and word-of-mouth.

The agenda for this meeting will include information gathering and discussion related to developing an air quality monitoring plan to assess the impacts of development in the Pinedale Anticline gas field, and identifying who will do and who will pay for the monitoring. Task Group recommendations are due to the PAWG in February, 2005. At a minimum, public comments will be heard just prior to adjournment of the meeting.

Dated: November 8, 2004.

Priscilla E. Mecham,

Field Office Manager.

[FR Doc. 04–25374 Filed 11–15–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–05–1020PH]

Notice of Public Meetings: Northeastern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Fiscal Year 2005 Meetings Locations and Times for the Northeastern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will meet as indicated below. Topics for discussion at each meeting will include, but are not limited to: January 28, 2005 (Reno, Nevada)—Ely Resource Management Plan, Water Resources Transportation Panel discussion, and Sage Grouse Status and Governor's Plan update; March 31, 2005 (Eureka, Nevada)—Ely Resource Management Plan follow-up, Wildland/Urban Interface Fire Projects, Elko Field Office Land Sale Parcels presentation, and Wind and Alternative Energy; May 20, 2005 (Elko, Nevada)—Elko Land Sales Parcels selection, Transportation Planning, and Off-Highway Vehicle; July 14 & 15, 2004 (Battle Mountain, Nevada)—Rangeland Health-Carrico Lake Tour and NEPA streamlining discussion. Managers' reports of field office activities will be given at each meeting. The council may raise other topics at any of the four planned meetings.

DATES: The RAC will meet four times in Fiscal Year 2005: on January 28, 2005 at the BLM Nevada State Office, 1340 Financial Boulevard, Reno, Nevada; on March 31, 2005 at the Eureka Opera House, 31 South Main, Eureka, Nevada; on May 20, 2004 at the BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada; and on July 14 & 15, 2004 at the BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada. All meetings are open to the public. Each meeting will last from 9 a.m. to 5 p.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 1 p.m. unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be available on the Internet at least 14 days before each meeting, at *http://www.nv.blm.gov/rac*; hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mike Brown, Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801, telephone (775) 753–0386 no later than 10 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management (BLM), on a variety of planning and management issues associated with public land management in Nevada. All meetings are open to the public. The public may present written comments to the Northeastern Great Basin Resource Advisory Council.

Dated: November 5, 2004.

Helen M. Hankins,

Field Manager.

[FR Doc. 04–25366 Filed 11–15–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0073).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. We changed the title of this information collection request (ICR) to clarify the regulatory language we are covering under 30 CFR Part 220. The previous title of this ICR was ''30 CFR Part 220, Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases.'' The new title of this ICR is ''30 CFR Part 220, Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases, § 220.010 NPSL capital account, § 220.030 Maintenance of records, § 220.031 Reporting and payment requirements, § 220.032 Inventories, and § 220.033 Audits.''

DATES: Submit written comments on or before January 18, 2005.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 220, Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases, § 220.010 NPSL Capital Account, § 220.030 Maintenance of Records, § 220.031 Reporting and Payment Requirements, § 220.032 Inventories, and § 220.033 Audits.

OMB Control Number: 1010–0073.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The MMS performs the royalty management functions for the Secretary.

Applicable citations of the laws are Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982) and Public Law 212—Aug. 7, 1953 (Outer Continental Shelf Lands Act of 1953, as amended by Public Law 93–627—Jan. 3, 1975; Public Law 95–372—Sept. 18, 1978; and Public Law 98–498—Oct. 19, 1984). These citations can be viewed on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

General Information

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure royalties or net profit share payments are properly valued and appropriately paid. Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected.

Net Profit Share Lease Bidding System

To encourage exploration and development of oil and gas leases on submerged Federal lands on the Outer Continental Shelf, regulations were promulgated at 30 CFR 260, Outer Continental Shelf Oil and Gas Leasing. Specific implementation regulations for the net profit share lease (NPSL) bidding system are promulgated at 30 CFR 260.110(d) (covered under ICR 1010–0143, expires December 31, 2006). The MMS established the NPSL bidding system to properly balance a fair market return to the Federal Government for the lease of its lands, with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development and provides for sharing the risks by the lessee and the Federal Government. The NPSL bidding system incorporates a fixed capital recovery system as a means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

The Federal Government does not receive a profit share payment from an NPSL until the lessee shows a credit balance in its capital account; that is, cumulative revenues and other credits exceed cumulative costs. The credit balance is multiplied by the net profit share rate (30 to 50 percent), resulting in the amount of net profit share payment due the Federal Government.

The MMS requires lessees to maintain an NPSL capital account for each lease, which transfers to a new owner when sold. Following the cessation of production, lessees are also required to provide either an annual or a monthly report to the Federal Government, using data from the capital account. In addition, NPSL lessees must notify MMS of their intent to perform an inventory and file a report after each inventory of controllable material. Further, when non-operators of an NPSL call for an audit, they must notify MMS. When MMS calls for an audit, the lessee must notify all non-operators on the lease. These requirements are located at 30 CFR Part 220, §§ 220.010, 220.030, 220.031, 220.032, and 220.033. This collection of information is necessary in order to determine when net profit share payments are due and to determine the proper amount of payment.

We are revising this ICR to add citations related to records management (30 CFR 220.030(a)) and inventories (30 CFR 220.032(b)). We added a new citation for a PRA-exempt requirement

related to audits (30 CFR 220.033(e)). For clarification, we added § 220.031(c) related to payment requirements. We have not included in our estimates certain requirements performed in the normal course of business, which are considered usual and customary.

Frequency of Response: Annually, monthly, and on occasion.

Estimated Number and Description of Respondents: 9 lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,583 hours.

All 9 lessees report monthly because all current NPSLs are in producing status. Because the establishment of capital accounts [30 CFR 220.010(a)] and capital account annual reporting [30 CFR 220.031(a)] requirements are necessary only during non-producing status of a lease, we included only 1 response annually for these requirements, in case a new NPSL is established. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR 220	Reporting & recordkeeping requirement	Hour burden	Number of annual responses	Annual burden hours
Part 220—Accounting procedures for determining net profit share payment for outer continental shelf oil and gas leases				
§ 220.010 NPSL capital account				
220.010(a)	(a) For each NPSL tract, an NPSL capital account shall be established and maintained by the lessee for NPSL operations. * * *	1	1	1
§ 220.030 Maintenance of records				
220.030(a)	(a) Each lessee * * * shall establish and maintain such records as are necessary * * *	1	9	9
§ 220.031 Reporting and payment requirements				
220.031(a)	(a) Each lessee subject to this part shall file an annual report during the period from issuance of the NPSL until the first month in which production revenues are credited to the NPSL capital account. * * *	16	1	16
220.031(b)	(b) Beginning with the first month in which production revenues are credited to the NPSL capital account, each lessee * * * shall file a report for each NPSL, not later than 60 days following the end of each month * * *	13	108	1,404
220.031(c)	(c) Each lessee subject to this part 220 shall submit, together with the report required * * * any net profit share payment due * * *	Burden hours covered under 220.031(b)		0
220.031(d)	(d) Each lessee * * * shall file a report not later than 90 days after each inventory is taken * * *	8	9	72
220.031(e)	(e) Each lessee * * * shall file a final report, not later than 60 days following the cessation of production * * *	4	9	36
§ 220.032 Inventories				
220.032(b)	(b) At reasonable intervals, but at least once every three years, inventories of controllable materiel shall be taken by the lessee. Written notice of intention to take inventory shall be given by the lessee at least 30 days before any inventory is to be taken so that the Director may be represented at the taking of inventory. * * *	1	9	9
§ 220.033 Audits				
220.033(b)(1)	(b)(1) When nonoperators of an NPSL lease call an audit in accordance with the terms of their operating agreement, the Director shall be notified of the audit call * * *	2	9	18
220.033(b)(2)	(b)(2) If DOI determines to call for an audit, DOI shall notify the lessee of its audit call and set a time and place for the audit. * * * The lessee shall send copies of the notice to the notice to the nonoperators on the lease. * * *	2	9	18
220.033(e)	(e) Records required to be kept under § 220.030(a) shall be made available for inspection by any authorized agent of DOI * * *	The Office of Regulatory Affairs has determined that the audit process is not covered by the PRA because MMS staff asks non-standard questions to resolve exception.		0
Total burden	.....	.....	164	1,583

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour cost'' burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site (see below).

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: November 5, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–25330 Filed 11–15–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a new information collection (1010–NEW).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) for review and approval of the paperwork requirements in the regulations under 30 CFR 250, Subpart I, Platforms and Structures, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 16, 2004.

ADDRESSES: You may submit comments either by fax (202) 395–6566 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–New). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Interested parties may submit a copy of their comments on-line to MMS, the address is: *https://ocsconnect.mms.gov.* From the Public Connect ''Welcome'' screen, you will be able to either search for Information Collection 1010–New or select it from the ''Projects Open For Comment'' menu.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team, (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations, and the Notice to Lessee (NTL) that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Assessment of Existing OCS Platforms Notice to Lessees (NTL).

OMB Control Number: 1010–New.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Specifically, the OCS Lands Act (43 U.S.C. 1356) requires the issuance of ''* * * regulations which require that any vessel, rig, platform, or other vehicle or structure * * * (2) which is used for activities pursuant to this subchapter, comply * * * with such minimum standards of design, construction, alteration, and repair as the Secretary * * * establishes * * *'' The OCS Lands Act (43 U.S.C. 1332(6)) also states, ''operations in the [O]uter Continental Shelf should be conducted in a safe manner * * * to prevent or minimize the likelihood of * * * physical obstruction to other users of the water or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.'' These authorities and responsibilities are

among those delegated to MMS under which we issue regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection request addresses the regulations at 30 CFR 250, Subpart I, Platforms and Structures.

The MMS OCS Regions use the information submitted under Subpart I to determine the structural integrity of all offshore structures and ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and pollution prevention.

Currently, lessees are required to conduct these platform assessments and evaluations (API RP 2A–WSD, 21st edition, incorporated by reference April 21, 2003 (68 FR 193521), into 30 CFR 250.900(g)), but the regulations under Subpart I do not require lessees to submit the results to MMS. Therefore, with this information collection request, MMS is requesting the submission of the results of platform assessments and evaluations. Upon OMB approval of this collection, MMS will issue an NTL that requests lessees to submit their results of platform assessments and evaluations on a voluntary basis. MMS will use this information to verify that lessees have conducted assessments of existing platforms in an appropriate and timely manner to evaluate the risk of allowing existing platforms to finish their originally approved purposes; more specifically, we will use the information submitted through the NTL to:

- Verify that existing platforms comply with design criteria in accordance to API RP 2A–WSD (21st edition), ''Recommended Practice For Planning, Designing, And Constructing Fixed Offshore Platforms—Working Stress Design,'' and to evaluate the risk of allowing existing platforms to finish their originally approved purpose.
- Review reports that relate to framing patterns, soil data, exposure category, initiator data, assessment screening, design level analysis, and ultimate strength analysis.
- Review mitigation plans and platform applications for platforms that fail the ultimate strength analysis.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2) and under regulations at 30 CFR 250.196, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Submissions are voluntary.

Frequency: Submission occurs periodically based on assessment.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: We estimate that the reporting burden for this collection is 113,528 burden hours. The oil and gas industry and MMS recognize that some existing platforms may not comply with the design criteria required for new platforms. Design criteria were developed to provide a way to evaluate the risk of allowing existing platforms to finish their originally approved purpose. The following discussion details the individual components and the respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

- MMS estimates that 3,347 platforms in the Gulf of Mexico (GOM) OCS will require submittal of framing patterns, soil data, exposure category, initiator data, and the assessment screening and report. Estimate 24 hours per submittal. Total burden = 80,328 hours.
- MMS estimates that 400 platforms will fail the assessment screening and require a design level analysis and report. Estimate 50 hours per submittal. Total burden = 20,000 hours.
- MMS estimates that 200 platforms will fail the design level analysis and require an ultimate strength analysis and report. Estimate 48 hours per submittal. Total burden = 9,600 hours.
- MMS estimates that 100 platforms will fail the ultimate strength analysis and require mitigation and a platform application. Estimate 36 hours per submittal. Total burden = 3,600 hours.
- Program = 113,528 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency '' * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on August 17, 2004, we published a **Federal Register** notice (69 FR 51101) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We have received no comments in response to this notice. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 16, 2004.

Public Comment Policy: MMS's practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: October 20, 2004.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–25331 Filed 11–15–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cuyahoga Valley National Park, OH

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Plan of Operations and Environmental Assessment for a 30-day public review at Cuyahoga Valley National Park, Summit County, Ohio.

SUMMARY: The National Park Service (NPS), in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations has received from Medina Fuel Company, Inc., a Plan of Operations to Conduct Geophysical (seismic) Testing within Camp Manatoc Boy Scout Reservation for the purpose of developing future oil/gas wells within the camp. A plan of operations describes the proposed operation, including the equipment, methods and materials to be used in the operation, mitigation measures to protect park resources and values and environmental conditions in the vicinity of the site, and environmental impacts of the proposed operation. When approved, the plan of operations serves as the operator's permit to conduct operations in a park. Camp Manatoc is private property located within Cuyahoga Valley National Park, just east of Peninsula, Ohio. The proposed plan of operation is subject to the existing Deed of Preservation and Conservation Easement between the Boy Scouts of America and the National Park Service at Cuyahoga Valley National Park. Under the provisions of the National Environmental Policy Act of 1969, the National Park Service has prepared an Environmental Assessment which evaluates potential environmental impacts associated with the proposed geophysical operation located within the park.

DATES: The above documents are available for public review and comment for a period of 30 days from the publication date of this notice in the **Federal Register**.

ADDRESSES: The Plan of Operations and Environmental Assessment are available for public review and comment in the Office of the Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, Ohio. Copies of the Plan of Operations are available, for a duplication fee, from the Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, Ohio 44141.

FOR FURTHER INFORMATION CONTACT: Meg Plona, Biologist, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, Ohio 44141. Telephone: (330) 342–0764, e-mail at *Meg_Plona@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to submit comments about this document within the 30 days, mail them to the address provided above, hand deliver them to the park at the street address provided above, or electronically file them to the e-mail address provided above. Our practice is to make the public comments we receive in response to planning documents, including names and home addresses of respondents, available for public review during regular business hours. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Individual respondents may request that we withhold their home address from the public record, and we will honor such requests to the extent allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: July 12, 2004.

John P. Debo, Jr.,

Superintendent, Cuyahoga Valley National Park.

[FR Doc. 04–25355 Filed 11–15–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Supplemental Environmental Impact Statement for the Elwha Ecosystem Restoration Implementation Final Environmental Impact Statement, Olympic National Park, Clallam County, WA; Notice of Availability

Summary: Pursuant to § 102 (2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and corresponding Council of Environmental Quality implementing regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior and its cooperating agencies have completed a draft supplement to the Elwha River Ecosystem Restoration Implementation final environmental impact statement (1996 Implementation EIS). Two dams (built in the early 1900s) block the Elwha River and limit anadromous fish to the lowest 4.9 river miles. A 1996 Implementation EIS (second of two impact statements that examined how best to restore the Elwha River ecosystem and native anadromous fishery in Olympic National Park) selected dam removal as the preferred option and identified a particular set of actions to remove the dams. The release of sediment from behind the dams would result in sometimes severe impacts to water quality or the reliability of supply to downstream users during the dam removal impact period of about 3–5 years, which the Implementation EIS proposed mitigating through a series of specific measures (see below). However, since 1996, when the Record of Decision was signed, new research and changes unrelated to the project have necessitated re-analysis of these measures. The primary purpose of the supplemental EIS (SEIS) is to analyze the impacts of a new set of water quality and supply related mitigation measures.

Background: Elwha Dam was built on the Elwha River in 1911 and Glines Canyon Dam in 1925, limiting anadromous fish to the lowest 4.9 miles of river and blocking access to more than 70 miles of Elwha River mainstem and tributary habitat. The two dams and their associated reservoirs have also inundated and degraded important riverine and terrestrial habitat and severely affected fisheries habitat through increased temperatures, reduced nutrients, the absence of spawning gravels downstream and other changes. Consequently, salmon and steelhead populations in the river have been considerably reduced or eliminated, and the Elwha River ecosystem within Olympic National Park significantly and adversely altered.

In 1992, Congress enacted the Elwha River Ecosystem and Fisheries Restoration Act (Pub. L. 102–495) directing the Secretary of the Interior to fully restore the Elwha river ecosystem and native anadromous fisheries, while at the same time protecting users of the river's water from adverse impacts associated with dam removal. As noted above, the decisions associated with this process indicated removal of both dams was needed to fully restore the ecosystem. Impacts to water quality will result from the release of sediment which has accumulated behind the dams. Impacts to water supply will

result from the release of fine sediment (*i.e.*, silts and clays). These sediments can reduce yield by clogging the gravel that overlays subsurface intakes during periods of high turbidities. Increases in flooding or flood stage are also a likely result of dam removal, as sediments would replenish and raise the existing riverbed back to its pre-dam condition.

The 1996 Implementation EIS proposed and analyzed numerous mitigation measures to protect quality and ensure supply for each of the downstream users, which included:

- The installation of an infiltration gallery to collect water filtered from the riverbed;
- Open channel treatment of this water for industrial customers;
- Closure of the state chinook rearing channel during and for years following dam removal, with chinook production transferred to another state facility;
- The installation of a second subsurface Ranney collector on the opposite shore to maintain yield during meander away from the existing collector;
- A temporary ''package'' treatment plant to filter water from the Ranney wells during dam removal;
- Expansion of the tribal hatchery and of its infiltration gallery and drilling of groundwater wells to facilitate protection and production of Elwha anadromous fish for restoration, and;
- On-site flood protection for the Dry Creek Water Association wellfield, or connection of these users to the Port Angeles water system.

Flood control measures included:

- The development of a mounded septic system on the Lower Elwha K'lallam Reservation; and
- Strengthening and extension of the federal levee and other smaller levees and flood control structures.

Continued study by the cooperating agencies since the 1996 Implementation EIS was finalized revealed the potential for unforeseen difficulties with some of the mitigation facilities, and identified different measures from those analyzed to resolve these difficulties. Further refining of the expected changes in flood stage following the restoring of riverbed sediments also showed they would be higher in some areas of the river and lower in others than the original modeling predicted. In addition, changes in user needs resulting from factors unrelated to the project required a new look at some of the mitigation measures. For example, chinook salmon and bull trout have both been listed as threatened since 1997, resulting in the requirement to keep the state rearing facility open during dam removal. Also, the city of Port Angeles must now meet new standards for the treatment of its municipal supplies. In addition, an industrial customer (Rayonier) which required very high quality water for its operation has since closed. The low-lying lands of the Reservation have also been developed to such a degree since 1996 that a small mounded septic system would not be adequate.

Proposal and Alternatives: Because this is a supplement to an EIS, the team generally analyzed only one action alternative and the No Action alternative for each mitigation facility. The 1996 Implementation EIS is focused on dam removal and sediment management, and analyzes two action alternatives. It, in turn, is tiered to a programmatic EIS, which examined four options and the No Action alternative for restoring the Elwha River ecosystem. Therefore, the supplement examines the most preferable feasible alternative for mitigating impacts to water quality and supply. Only when it remains unclear at this time what the preferred option for a specific mitigation measure is are alternatives presented. This includes providing water for the Dry Creek Water Association, upgrading the tribal hatchery, and providing flood control for the tribal and other residents near the mouth of the river. Alternatives for supplying water to industrial, hatchery and municipal consumers, for treating municipal supply, intake and control weir and tribal wastewater connection to Port Angeles that were not selected for analysis and the reasons for not carrying them further are described in chapter two of the SEIS and in the Elwha River Water Quality Mitigation Project Planning Report (available on the Elwha Web site at *http://www.nps.gov/olym/elwha/home.htm*).

The proposed action includes the following:

- The use of surface water rather than a subsurface infiltration gallery and additional Ranney well to supply the city's municipal and industrial customers, the tribal hatchery and the state's chinook rearing channel. This change is intended to prevent ''blinding'', which research after 1996 found was likely to occur in any kind of subsurface water collecting facility. Blinding clogs and effectively seals the surface with fine sediment for a period of time, and can substantially reduce yield.
- Removal of the existing rock dam and intake structure that currently supplies the city's industrial customers, and replacement with a graded fish riffle and weir structure to pass fish, provide fish habitat and pool water. The existing intake will be replaced.
- A sediment removal facility built in the location of the existing industrial treatment channel on the east bank of the river, which will receive water for treatment from the weir and intake described above. Water from this facility will be sent to industrial customers, and at times to a new water treatment facility during the 3–5 year dam removal impact period.
- A new permanent water treatment facility in Port Angeles adjacent to the city's existing landfill area, which will receive water from the sediment removal facility during and for a period of time following dam removal, and subsequently from the city's existing Ranney collector.
- Flood protection of an existing wellfield, an optional wellfield and connection to the city of Port Angeles supply for Dry Creek Water Association, with an extension to four homeowners in Elwha Heights subdivision.
- Expansion or relocation of the tribal hatchery, with water supplied from the sediment removal facility as described above.
- Maintaining the state chinook rearing channel open during dam removal with water from the sediment removal facility, and creating a rearing pond on nearby Morse Creek as a back-up during dam removal.
- Raising the federal levee an average of 3.3 feet, as compared to 2.5 feet in the 1996 Implementation EIS, and armoring with rock riprap where needed. It would also be lengthened to provide protection near the mouth of the river. Three options for providing additional protection further upstream of the river mouth are examined. These include extending the levee, raising and strengthening the haul road, and using a series of spur dikes and deflection structures. A second levee across the river would also be strengthened, re-aligned along higher ground, or removed and the homes behind it raised.
- The tribe would construct a sewage collection and pumping system and a pipeline to connect to the city of Port Angeles.
- Finally, because economics regarding concrete have changed since 1996, sections removed from Glines Dam will be transported to a private facility to be crushed and recycled.

Each of these facilities is funded wholly or in part by the federal government to the extent that they provide mitigation from the effects of dam removal. Additional funding may be provided by homeowners groups if protection or improvement beyond that resulting directly from dam removal is desired.

The No Action alternative is the same alternative as was discussed in the 1996 Implementation EIS; that is, no dam removal would take place. Because the dams would remain, water and flooding mitigation would not be needed.

Scoping. Public scoping for the SEIS took place in September and October 2002, and six comment letters resulting in twelve comments were received. All scoping comments are addressed in the SEIS (in chapter 5, Consultation and Coordination). In addition to public scoping, the park and its cooperating agencies have also consulted with the U.S. Fish and Wildlife Service and NOAA Fisheries to provide protection and restoration for bull trout and chinook salmon.

Comments: This Supplement to the 1996 Implementation EIS is now available for public review. Interested persons and organizations wishing to express any concerns or comments should send written comments to Dr. Brian Winter, Elwha Project Manager, at 826 East Front Street, Ste. A, Port Angeles, WA 98362; telephone inquiries may be directed to (360) 565–1320. Faxed or electronic transmittals will be accepted also (electronic comments should be sent to *Brian_Winter@nps.gov,* and faxes may be sent to (360) 565–1325).

Because several public meetings have already taken place on the 1996 Implementation EIS (and the prior Programmatic EIS for dam removal), no additional public meeting for this supplement to discuss mitigation measures is anticipated. Therefore, written comments are the only vehicle for making your opinions and concerns known and a part of the record for this SEIS process. The following options are available: you may request a summary of the SEIS, a full paper copy of the SEIS, a CD of the SEIS and/or a CD of the full 1996 Implementation EIS which the subject document supplements. Those who commented during prior scoping processes will receive a full SEIS and a CD of the FEIS, as will agencies and others on the park mailing list (see chapter 5 of the SEIS). Please specify which of these documents/CDs you would like to receive when calling, e-mailing or faxing the Elwha Project Management Office. Finally, both the SEIS and 1996 Implementation EIS will be posted on the Elwha project Web site at *http://www.nps.gov/olym/elwha/home.htm.*

All written comments must be postmarked no later than 60 days from the date the Environmental Protection Agency publishes its notice of filing in the **Federal Register**. Immediately upon confirmation of this date it will be posted on the park's Web site and announced via local and regional media. Please keep in mind that *decisions or facts in the 1996 implementation EIS are not subject to public comment at this time.* The 1996 Implementation EIS is being made available for background information only, and no response to comments made on the 1996 Implementation EIS during this 60-day review period will be forthcoming in the final SEIS. In other words, decisions associated with dam removal and sediment management have already been made and the information on which they were made has already been publicly reviewed—comments should be confined to information provided in the SEIS only. Be sure to include your complete name and address along with your comments. Please note that names and addresses of people who comment become part of the public record. If individuals commenting request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold from the record a respondent's identity, as allowable by law. As always: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Dated: September 13, 2004.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 04–25356 Filed 11–15–04; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Star-Spangled Banner National Historic Trail Study Report Environmental Impact Statement; Maryland, District of Columbia, and Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the final environmental impact statement for the Star-Spangled Banner National Historic Trail Study.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service announces the availability of the final Environmental Impact Statement for the Star-Spangled Banner National Historical Trail Study.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection from the Northeast Region, National Park Service, 200 Chestnut Street, Philadelphia, PA 19106 or at *http://www.nps.gov/phso/jstarspan/.*

FOR FURTHER INFORMATION CONTACT: William Sharp, Project Manager, Northeast Region, 215–597–1655 or *william_sharp@nps.gov.*

Dated: August 20, 2004.

Marie Rust,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 04–25433 Filed 11–15–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Record of Decision, Big Bend National Park, TX

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the General Management Plan, Big Bend National Park.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Record of Decision for the General Management Plan/Environmental Impact Statement for Big Bend National Park, Texas. On September 13, 2004, the Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the NPS will begin to implement the General Management Plan, described as the Preferred Alternative contained in the Final Environmental Impact Statement issued July 9, 2004. In the preferred alternative, a new visitor center will be built at Panther Junction to provide room for interpretive media to adequately interpret key aspects of the park's stories and to help visitors plan their stays. The space in the headquarters building vacated by the visitor center function will be redesigned for staff offices. A storage warehouse,

bunkhouse, and employee residence will also be built at Panther Junction. The natural resources and collection management building should adequately provide for the collection storage needs for the duration of this plan. If additional storage collection space is needed, the other new storage areas will be evaluated to accommodate this need. One employee residence and one employee bunkhouse will be removed from Chisos Basin to reduce human water use at the area. At Rio Grande Village the RV campground will be enlarged by about 40% in area, with no more than 30 total sites. Cottonwood Campground campsites will be relocated away from bank cave-in areas, and a new egress road will be constructed. Fifteen percent of park personnel will be moved to gateway communities where offices and residences will be built or leased. This course of action and two alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures identified. The full Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decisionmaking process, and a statement of findings.

Basis for Decision

In reaching its decision to select the preferred alternative, NPS managers considered the purposes for which the park was established and other laws and policies that apply to lands in the park, including the NPS Organic Act, National Environmental Policy Act, NPS Director's Order 12 (Conservation Planning, Environmental Impact Analysis, and Decisionmaking), and the NPS Management Policies 2001. The NPS also carefully considered public comments received during the planning process.

To develop a preliminary preferred alternative, the planning team evaluated the alternatives that had been reviewed by the public. The alternatives were tested against the decision points and issues identified by the public and park to determine their relative advantages. The following conclusions were reached:

- The preferred alternative includes more actions that are beneficial to the cultural and natural resources than other alternatives.
- The preferred alternative will enhance the visitor's experience by providing multiple opportunities for visitors to make intellectual and emotional connections to the park. Enhanced interpretation, programs, and activities will enable visitors to link tangible resources with the intangible meanings and significance of the park. The proposed development will provide opportunities for the interpretive division to fully address the various themes and complexities of the park.

Findings on Impairment

The NPS has determined that implementation of the proposal will not constitute an impairment to Big Bend National Park's resources and values. This conclusion is based on a thorough analysis of the environmental impacts described in the Environmental Impact Statement, the public comments received, relevant scientific studies, and the professional judgment of the decision-maker guided by the direction in the NPS Management Policies. Overall, the plan results in benefits to park resources and values and opportunities for their enjoyment, and it does not result in their impairment.

FOR FURTHER INFORMATION CONTACT: John H. King, Big Bend National Park, P.O. Box 129, Big Bend National Park, TX 79834–0129, (915) 477–2251.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above.

Dated: November 8, 2004.

Bernard C. Fagan,

Deputy Chief, NPS Office of Policy .

[FR Doc. 04–25354 Filed 11–15–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet November 29–30, 2004, in Coral Gables, Florida. On November 29, the Board will tour Everglades National Park and will be briefed regarding environmental, education and partnership programs of Everglades National Park and Big Cypress National Preserve. The Board will convene its business meeting on November 30 at 9 a.m., e.s.t., in the Prado Room of The Biltmore Hotel, 1200 Anastasia Avenue, Coral Gables, Florida 33134, telephone 305–445–1926. The meeting will be adjourned at 4:30 p.m. The Board will be addressed by National Park Service Director Fran Mainella and will receive the reports of its Education Committee, Partnerships Committee, National Landmarks Committee, Director's Council, and National Parks Science Committee. The Board also will receive reports on national park philanthropic issues and the HealthierFeds Physical Activity Challenge.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also may permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service; 1849 C Street, NW., Room 7250; Washington, DC 20240; telephone 202–208–7456.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: November 8, 2004.

Bernard Fagan,

Deputy Chief, Office of Policy.

[FR Doc. 04–25434 Filed 11–15–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Heard Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act

(NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Heard Museum, Phoenix, AZ, that meets the definition of ''cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is a Dilzini Gaan headdress made of painted wood and cloth.

It is not known exactly when, where, or by whom the headdress was collected, or under what circumstances the Heard Museum acquired the headdress. The museum probably acquired the headdress before 1952, since the museum's collections were re-cataloged after 1951, and the headdress appears to match a catalog description that was probably written between 1931 and 1947.

Representatives of the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona examined the museum's collections, consulted with museum staff, and identified the headdress as an object of cultural patrimony eligible for repatriation under NAGPRA. The White Mountain Apache Tribe demonstrated that the cultural item has ongoing traditional and cultural importance to the tribe and could not have been conveyed by any individual tribal member.

Officials of the Heard Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the cultural item has ongoing historical, traditional, or cultural importance central to the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona, rather than property owned by an individual. Officials of the Heard Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the object of cultural patrimony should contact Frank Goodyear, Director, Heard Museum, 2301 N. Central Avenue, Phoenix, AZ 85004, telephone (602) 252-8840, before December 16, 2004. Repatriation of the object of cultural patrimony to the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona may proceed after that date if no additional claimants come forward.

The Heard Museum is responsible for notifying the Apache Tribe of Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona that this notice has been published.

Mary Downs,

Acting Manager, National NAGPRA Program

[FR Doc. 04–25353 Filed 11–15–04; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–258S]

Dispensing of Controlled Substances for the Treatment of Pain

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Interim policy statement.

SUMMARY: In August 2004, DEA published on its Office of Diversion Control Web site a document entitled: ''Prescription Pain Medications: Frequently Asked Questions and Answers for Health Care Professionals and Law Enforcement Personnel'' (August 2004 FAQ). The August 2004 FAQ was not published in the **Federal Register** and was not an official statement of the agency. DEA subsequently withdrew the document because it contained misstatements. This interim policy statement explains how some of the statements in the August 2004 FAQ were erroneous. In addition, this interim statement explains how DEA plans to address in a future **Federal Register** document the issue of dispensing controlled substances for the treatment of pain.

FOR FURTHER INFORMATION CONTACT: William J. Walker, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION: In August 2004, DEA published on its Office of Diversion Control Web site a document entitled: ''Prescription Pain Medications: Frequently Asked Questions and Answers for Health Care Professionals and Law Enforcement Personnel'' (August 2004 FAQ). For the reasons provided below, the August 2004 FAQ was not an official statement of the agency and DEA subsequently withdrew the document because it contained misstatements. Nonetheless, the subject matter—dispensing controlled substances for the treatment of pain—is extremely important to the public health and welfare. As the agency primarily responsible for enforcement and administration of the federal laws and regulations governing controlled substances, DEA believes that further discussion of the subject is warranted for two fundamental reasons. First, the abuse of pharmaceutical narcotics and other prescription controlled substances is increasing in the United States. According to the latest National Survey on Drug Use and Health, which is published by the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), the number of Americans aged 12 or older who have engaged in illicit (nonmedical) use of pain relievers during their lifetime has risen to more than 31 million.[1] A portion of this type of drug abuse is directly facilitated by a small number of physicians who dispense controlled substances for other than legitimate medical purposes and then fraudulently claim that the drugs were dispensed for the treatment of pain.

Second, chronic pain is a serious problem for many Americans. It is crucial that physicians who are engaged in legitimate pain treatment not be discouraged from providing proper medication to patients as medically justified. DEA recognizes that the overwhelming majority of physicians dispense controlled substances lawfully for legitimate medical reasons, including the treatment of pain. Accordingly, DEA plans to address the subject of dispensing controlled substances for the treatment of pain in a future **Federal Register** document, taking into consideration the views of the medical community. The document will be aimed at providing guidance and reassurance to physicians who engage in

[1] The report is available on the SAMHSA Web site at *http://oas.samhsa.gov/NHSDA/2k3NSDUH/2k3results.htm.*

legitimate pain treatment while deterring the unlawful conduct of a small number of physicians and other DEA registrants who exploit the term ''pain treatment'' as a pretext to engage in prescription drug trafficking. In the meantime, the agency wishes to correct here a few of the significant misstatements contained in the August 2004 FAQ.

Misstatements in the August 2004 FAQ

Although not an exhaustive discussion, the following is an explanation of some of the misstatements that were contained in the August 2004 FAQ.

Commencement of investigations—The August 2004 FAQ erroneously stated: ''The number of patients in a practice who receive opioids, the number of tablets prescribed for each patient, and the duration of therapy with these drugs do not, by themselves, indicate a problem, and they should not be used as the sole basis for an investigation by regulators or law enforcement.'' In fact, each of the foregoing factors—though not necessarily determinative—may indeed be indicative of diversion. As one federal appeals court has correctly stated, one can glean from the reported cases in which physicians have been convicted of dispensing controlled substances for other than a legitimate medical purpose ''certain recurring concomitance of condemned behavior,'' such as the following:

(1) An inordinately large quantity of controlled substances was prescribed.
(2) Large numbers of prescriptions were issued.
(3) No physical examination was given.
(4) The physician warned the patient to fill prescriptions at different drug stores.
(5) The physician issued prescriptions to a patient known to be delivering the drugs to others.
(6) The physician prescribed controlled drugs at intervals inconsistent with legitimate medical treatment.
(7) The physician involved used street slang rather than medical terminology for the drugs prescribed.
(8) There was no logical relationship between the drugs prescribed and treatment of the condition allegedly existing.
(9) The physician wrote more than one prescription on occasions in order to spread them out.

United States v. *Rosen,* 582 F.2d 1032, 1035–1036 (5th Cir. 1978) (citations omitted).

Moreover, it is a longstanding legal principle that the Government ''can investigate merely on suspicion that the law is being violated, or even just because it wants assurances that it is not.'' *United States* v. *Morton Salt Co.,* 338 U.S. 632, 642–643 (1950). It would be incorrect to suggest that DEA must meet some arbitrary standard or threshold evidentiary requirement to commence an investigation of a possible violation of the Controlled Substances Act (CSA).

Refills of schedule II prescriptions—The August 2004 FAQ stated: ''Schedule II prescriptions may not be refilled; *however, a physician may prepare multiple prescriptions on the same day with instructions to fill on different dates.*'' (Italics added.) The first part of this sentence is correct, as the CSA expressly states: ''No prescription for a controlled substance in schedule II may be refilled.'' 21 U.S.C. 829(a). However, the second part of the sentence (italicized above) is incorrect. For a physician to prepare multiple prescriptions on the same day with instructions to fill on different dates is tantamount to writing a prescription authorizing refills of a schedule II controlled substance. To do so conflicts with one of the fundamental purposes of section 829(a). Indeed, as the factors quoted above from the Rosen case indicate, writing multiple prescriptions on the same day with instructions to fill on different dates is a recurring tactic among physicians who seek to avoid detection when dispensing controlled substances for unlawful (nonmedical) purposes. It is worth noting here that the DEA regulations setting forth the requirements for the issuance of a controlled substance prescription are set forth in 21 CFR 1306.01–1306.27.

Reselling of controlled substances—The August 2004 FAQ listed a number of behaviors, or ''red flags,'' that are ''probable indicators of abuse, addiction, or diversion.'' These behaviors include ''selling medications.'' The document suggested that certain steps be taken to deal with such indicators, including ''appropriate management'' and possible referral to an addiction specialist. The document went on to state that these behaviors (including reselling medications) ''should not be taken to mean that a patient does not have pain, or that opioid therapy is contraindicated.'' The document also stated: ''Management may or may not include continuation of therapy, depending on the circumstances.'' Finally, the document stated that ''if continued opioid therapy makes medical sense, then the therapy may be continued, even if drug abuse has occurred. Additional monitoring and oversight of patients who have experienced such an episode is *recommended.*'' (Italics added.)

The behaviors listed in the August 2004 FAQ as ''red flags'' are indeed indicators of possible diversion. However, the August 2004 FAQ understated the degree of caution that a physician must exercise to minimize the likelihood of diversion when dispensing controlled substances to known or suspected addicts. If a physician is aware that a patient is a drug addict and/or has resold prescription narcotics, it is not merely ''recommended'' that the physician engage in additional monitoring of the patient's use of narcotics. Rather, as a DEA registrant, the physician has a responsibility to exercise a much greater degree of oversight to prevent diversion in the case of a known or suspected addict than in the case of a patient for whom there are no indicators of drug abuse. Under no circumstances may a physician dispense controlled substances with the knowledge that they will be used for a nonmedical purpose or that they will be resold by the patient.

In a similar vein, the August 2004 FAQ incorrectly minimized the potential significance of a family member or friend expressing concern to the physician that the patient may be abusing the pain medication. The document stated:

Family and friends, or health care providers who are not directly involved in the therapy, may express concerns about the use of opioids. These concerns may result from a poor understanding of the role of this therapy in pain management or from an unfounded fear of addiction; they may be exacerbated by widespread, sometimes inaccurate media coverage about abuse of opioid pain medications.

While it is true that concerns of family members are not always determinative of whether the patient is engaged in drug abuse, the above-quoted statement is incorrect to the extent it implies that physicians may simply disregard such concerns expressed to them by family members or friends. Indeed, a family member or friend might be aware of information that the physician does not possess regarding a patient's drug abuse. Given the addictive and sometimes deadly nature of prescription narcotic abuse, the tremendous volume of such drug abuse in the United States, and the propensity of many drug addicts to attempt to deceive physicians in order to obtain controlled substances for the purpose of abuse, a physician should seriously consider any sincerely expressed concerns about drug abuse conveyed by family members and friends.

It bears emphasis that none of the principles summarized above is new. Rather, these are concepts that have been incorporated for more than 80

years into the federal laws and regulations governing drugs of abuse and are reflected in published federal court decisions and DEA final administrative orders. A more detailed recitation of these principles, as they relate to the dispensing of controlled substances for the treatment of pain, will be provided in a future **Federal Register** document to be published by the agency.

Nature of This Document and the August 2004 FAQ Under the Administrative Procedure Act

This document is a statement of policy within the meaning of the Administrative Procedure Act (APA). It is termed an ''interim'' statement to indicate that a more complete statement on the subject will subsequently be issued by the agency. (Given the misstatements in the August 2004 FAQ, and the significant questions DEA has received following the withdrawal of that document, an immediate preliminary explanation is warranted.) The APA expressly requires agencies to make available to the public and publish in the **Federal Register** statements of general policy and interpretations formulated and adopted by the agency. 5 U.S.C. 552(a)(1)(D). Further, the APA contemplates that agencies shall issue policy statements without engaging in the notice-and-comment proceedings that are required for legislative rules. 5 U.S.C. 553(b)(A). This is because policy statements, unlike legislative rules, are not binding. Consistent with these APA principles, this document does *not* create any new substantive requirements or change the rights and duties of any member of the public; nor is DEA applying the CSA or DEA regulations in a new manner as a result of this document. Rather, this document provides the public with DEA's policy for ensuring that the law administered by the agency relating to the subject matter of this document is faithfully executed.

It also bears emphasis that the August 2004 FAQ was *not* an official statement of the agency. As indicated above, the APA requires publication in the **Federal Register** of agency policy statements or interpretations of the law administered by the agency. The August 2004 FAQ was not published by the agency in the **Federal Register** and did not constitute an authoritative or official statement of the agency.

Dated: November 12, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–25469 Filed 11–12–04; 10:57 am]

BILLING CODE 4410–09–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–249F]

Controlled Substances: Final Revised Aggregate Production Quotas for 2004

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of final aggregate production quotas for 2004.

SUMMARY: This notice establishes final 2004 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA). The DEA has taken into consideration comments received in response to a notice of the proposed revised aggregate production quotas for 2004 published September 9, 2004 (69 FR 54703).

EFFECTIVE DATE: November 16, 2004.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

The 2004 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2004 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances.

On September 9, 2004 a notice of the proposed revised 2004 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (69 FR 54703). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before September 30, 2004.

Eight companies commented on a total of 15 Schedules I and II controlled substances within the published comment period. The companies commented that the proposed aggregate production quotas for amphetamine, codeine (for conversion), fentanyl, hydrocodone, hydromorphone, marihuana, methamphetamine (for conversion), methamphetamine (for sale), methylphenidate, morphine (for conversion), morphine (for sale), opium, tetrahydrocannabinols, and thebaine were insufficient to provide for the estimated medical, scientific, research, and industrial needs of the United States, for export requirements and for the establishment and maintenance of reserve stocks.

DEA has taken into consideration the above comments along with the relevant 2003 year-end inventories, initial 2004 manufacturing quotas, 2004 export requirements, actual and projected 2004 sales and use, and research and product development requirements. Based on this information, the DEA has adjusted the final 2004 aggregate production quotas for codeine (for conversion), fentanyl, hydromorphone, methamphetamine (for conversion), methamphetamine (for sale), methylphenidate, morphine (for sale), tetrahydrocannabinols, and thebaine to meet the legitimate needs of the United States.

Regarding amphetamine, hydrocodone, marihuana, morphine (for conversion), and opium the DEA has determined that the proposed revised 2004 aggregate production quotas are sufficient to meet the current 2004 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate inventories.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby orders that the 2004 final aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Established final 2004 quotas
Schedule I	
2,5–Dimethoxyamphetamine	3,501,000
2,5–Dimethoxy-4-ethylamphetamine (DOET)	2
2,5–Dimethoxy-4-n-proplythiophenetyhlamine (2C-T–7)	10
3–Methylfentanyl	2
3–Methylthiofentanyl	2
3,4–Methylenedioxyamphetamine(MDA)	11
3,4–Methylenedioxy-N-ethylamphetamine (MDEA)	5
3,4–Methylenedioxymethamphetamine (MDMA)	16
3,4,5–Trimethoxyamphetamine	2
4–Bromo-2,5–Dimethoxyamphetamine (DOB)	2
4–Bromo-2,5–Dimethoxyphenethylamine (2–CB)	2
4–Methoxyamphetamine	2
4–Methylaminorex	2
4–Methyl-2,5–Dimethoxyamphetamine (DOM)	2
5–Methoxy-3,4–Methylenedioxyamphetamine	2
5–Methoxy-N,N-diisopropyltryptamine (5–MeO-DIPT)	10
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	4
Alphacetylmethadol	2
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	3
Alpha-methyltryptamine (AMT)	10
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	2
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	2
Codeine-N-oxide	502
Diethyltryptamine	2
Difenoxin	8,000
Dihydromorphine	1,101,000
Dimethyltryptamine	3
Gamma-hydroxybutyric acid	8,000,000
Heroin	5
Hydromorphinol	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	61
Marihuana	840,020
Mescaline	2
Methaqualone	5
Methcathinone	4
Methyldihydromorphine	2
Morphine-N-oxide	502
N,N-Dimethylamphetamine	2
N-Ethyl-1–Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4–Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	52
Normethadone	2
Normorphine	12
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Propiram	210,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	180,000
Thiofentanyl	2
Trimeperidine	2

Basic class	Established final 2004 quotas
Schedule II	
1–Phenylcyclohexylamine	2
1–Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	2,000
Alphaprodine	2
Amobarbital	3
Amphetamine	12,700,000
Cocaine	200,000
Codeine (for sale)	41,341,000
Codeine (for conversion)	48,252,000
Dextropropoxyphene	167,365,000
Dihydrocodeine	776,000
Diphenoxylate	836,000
Ecgonine	38,000
Ethylmorphine	2
Fentanyl	1,428,000
Glutethimide	2
Hydrocodone (for sale)	34,000,000
Hydrocodone (for conversion)	1,500,000
Hydromorphone	1,724,000
Isomethadone	2
Levo-alphacetylmethadol (LAAM)	2
Levomethorphan	2
Levorphanol	15,000
Meperidine	9,753,000
Metazocine	1
Methadone (for sale)	14,720,000
Methadone Intermediate	18,296,000
Methamphetamine [675,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,525,000 grams for methamphetamine mostly for conversion to a Schedule III product; and 50,000 grams for methamphetamine (for sale)]	2,250,000
Methylphenidate	28,693,000
Morphine (for sale)	35,021,000
Morphine (for conversion)	110,774,000
Nabilone	2
Noroxymorphone (for sale)	99,000
Noroxymorphone (for conversion)	3,800,000
Opium	1,300,000
Oxycodone (for sale)	49,200,000
Oxycodone (for conversion)	920,000
Oxymorphone	534,000
Pentobarbital	18,251,000
Phencyclidine	2,060
Phenmetrazine	2
Phenylacetone	11,000,000
Racemethorphan	2
Secobarbital	2
Sufentanil	4,000
Thebaine	72,453,000

The Deputy Administrator further orders that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $113,000,000 or more in any one year, and will not significantly or uniquely affect small

governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: November 5, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–25340 Filed 11–15–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1412]

Meeting of the Juvenile Justice Advisory Committee

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Juvenile Justice Advisory Committee (JJAC) in Washington, DC, on December 9, 2004, at the meeting times and location noted below. The meeting will discuss and approve two annual reports for 2004. The first report contains recommendations to the President and Congress on Federal legislation pertaining to juvenile justice and delinquency prevention. The second report contains recommendations to the Administrator regarding the work of OJJDP. The meeting will also reorganize the JJAC subcommittees and begin discussing recommendations for the 2005 reports.

DATES: The meeting will take place on Thursday, December 9, 2004, from 9 a.m. to 3 p.m., E.D.T.

ADDRESSES: The meeting will take place at the Capital Hilton, 1001 16th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Timothy Wight, Designated Federal Official, OJJDP, at *Timothy.Wight@usdoj.gov,* or by telephone at (202) 514–2190. [**Note:** this is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Juvenile Justice Advisory Committee, established pursuant to sec. 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under sec. 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. JJAC is composed of one representative from each state and territory and the District of Columbia. Their duties are to review Federal policies regarding juvenile justice and delinquency prevention; advise the OJJDP Administrator with respect to particular functions and aspects of the work of OJJDP; and advise the President and Congress with regard to state perspectives on the operation of OJJDP and federal legislation pertaining to juvenile justice and delinquency prevention. More information on JJAC, including a list of members, may be found at *http://www.ojjdp.ncjrs.org/jjac/.*

Schedule: The schedule of events is as follows:

9 a.m.–9:15 a.m.—Call to Order by JJAC Chairman (Open Session)
9:15 a.m.–9:45 a.m.—Opening Remarks by OJJDP Administrator J. Robert Flores, followed by questions and answers
9:45 a.m.–10 a.m.—Annual Report Committee: Recommendations to approve the 2004 Annual Report to the President and Congress and the 2004 Annual Recommendations Report to the Administrator of OJJDP
10 a.m.–10:40 a.m.—Reorganization of JJAC Subcommittees (if necessary) in preparation for calendar year 2005 activities
10:45 a.m.–1 p.m.—Working Lunch for JJAC Annual Report, Grants, Legal Affairs, and Planning Subcommittees (Closed Session)
1 p.m.–3 p.m.—Subcommittee Reports (Open Meeting)
3 p.m.—Meeting will be adjourned

Access: Members of the public who wish to attend the open sessions of the meeting should register by sending an e-mail containing their name, affiliation, address, phone number, and a statement concerning the sessions they would like to attend, to *JJAC@jjrc.org.* If e-mail is not available, please call (301) 519–6473 (Daryel Dunston). Because space is limited, notification should be sent by November 24, 2004.

Written Comments: Interested parties may submit written comments by November 24, 2004, to Timothy Wight, Designated Federal Official for the Juvenile Justice Advisory Committee, OJJDP, at *Timothy.Wight@usdoj.gov*, or by telephone at (202) 514–2190. [**Note:** this is not a toll-free number.] No oral presentations will be permitted at this meeting.

Dated: November 10, 2004.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 04–25408 Filed 11–15–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 1, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Training Plan Regulations and Certificate of Training.

OMB Number: 1219–0009.

Form Number: MSHA 5000–23.

Frequency: On occasion and Annually.

Type of Response: Recordkeeping; Reporting; and Third party disclosure.

Affected Public: Business or other for-profit.

Number of Respondents: 2,947.

Collection of information	Annual responses	Average response time (hours)	Annual burden hours
Training Plans—Coal			
Paper submission	1,144	8	9,152
Electronic submission	73	1.25	91
Training Plans—Metal/Non-metal			
Paper submission	8	8	64
Electronic submission	95	1.25	119
MSHA Form 5000–23	111,986	0.08	8,959
Grand Total	113,306	.....	18,385

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $226,276.

Description: Title 30, CFR 48.3 and 48.23 specifically address the requirements for training plans. The standards are intended to ensure that miners will be effectively trained in matters affecting their health and safety, with the ultimate goal being the reduction of injuries in the nation's mines. The approved plans are used to implement training programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training. The plans are also used by MSHA to ensure that all miners are receiving the training necessary to perform their jobs in a safe manner.

Title 30, CFR 48.9 and 48.29 specify how training provided to miners must be recorded. Upon completion of each training program, the mine operator certifies on MSHA Form 5000–23 that the miner has received the specified training in each subject area of the approved health and safety training plan. The Form 5000–23 provides the mine operator with a recordkeeping form, the miner with a certificate of training, and MSHA with a monitoring tool for determining compliance requirements.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–25384 Filed 11–15–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 5, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Mine Accident, Injury & Illness Report and Quarterly Mine Employment and Coal Production Report (30 CFR 50.10; 50.11, 50.20 and 50.30).

OMB Number: 1219–0007.

Forms: MSHA 7000–1 and MSHA 7000–2.

Frequency: On occasion and Quarterly.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 26,250.

Collection of information	Annual responses	Average response time (hours)	Annual burden hours
MSHA Form 7000–1			
Immediate Notification of MSHA fatal accidents	56	0.50	28

Collection of information	Annual responses	Average response time (hours)	Annual burden hours
other accidents	1,543	0.50	772
Investigation of Accidents and Occupational Injuries			
fatal accidents	56	80.00	4,480
nonfatal accidents	1,631	16.00	26,096
other accidents	12,735	1.00	12,735
Separate Reports of Investigation (mines w/ 20+ empl.)			
fatal accidents	36	4.00	144
other accidents	11,424	1.00	11,424
Mine Accident, Injury, and Illness Reports			
initial reports	14,422	0.50	7,211
follow-up reports	7,055	0.33	2,328
Form 7000–1 Sub-total	48,958	.....	65,218
MSHA Form 7000–2			
Mailed Reponses	74,401	0.50	37,201
Electronic Responses	10,493	0.25	2,623
Form 7000–1 Sub-total	84,894	.....	39,824
Grand Total	133,852	.....	105,042

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $34,105.

Description: The reporting and recordkeeping provisions in 30 CFR part 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 50.10 requires mine operators and mining contractors to immediately notify MSHA in the event of an accident. This immediate notification is critical to MSHA's timely investigation and assessment of the probable cause of the accident.

Section 50.11 requires that the operator or contractor investigate each accident and occupational injury and prepare a report. The operator or contractor may not use MSHA Form 7000–1 as a report, unless the mine employs fewer than 20 miners and the occurrence involves an occupational injury not related to an accident.

Section 50.20(a) requires mine operators and mining contractors to report each accident, injury, or illness to MSHA on Form 7000–1 within 10 working days after an accident or injury has occurred or an occupational illness has been diagnosed. The use of MSHA Form 7000–1 provides for uniform information gathering across the mining industry.

MSHA tabulates and analyzes the information from MSHA Form 7000–1, along with data from MSHA Form 7000–2, to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

Accident, injury, and illness data when correlated with employment and production data provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing. This could not be done effectively utilizing historical data. The information collected under part 50 is the most comprehensive and reliable occupational data available concerning the mining industry.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) mandates that each accident be investigated by the operator to determine the cause and means of preventing a recurrence. Records of such accidents and investigations shall be kept and made available to the Secretary or his authorized representative and the appropriate State agency. Section 103(h) requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act. Section 103(j) of the Mine Act requires operators to notify MSHA of the occurrence of an accident and to take appropriate measures to preserve any evidence which would assist in the investigation into the cause or causes of the accident.

Data collected through MSHA Form 7000–1 and MSHA Form 7000–2 enable MSHA to publish timely quarterly and annual statistics, reflecting current safety and health conditions in the mining industry. These data are used not only by MSHA, but also by other Federal and State agencies, health and safety researchers, and the mining community to assist in measuring and comparing the results of health and safety efforts both in the United States and internationally.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–25385 Filed 11–15–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0239(2005)]

Voluntary Protection Programs Information; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in the Voluntary Protection Programs Information.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by January 18, 2005.

Facsimile and electronic transmission: Your comments must be received by January 18, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0239(2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Cathy Oliver at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Division of Voluntary Programs, Office of Partnerships and Recognition, Directorate of Cooperative and State Programs, OSHA, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2213. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements for the Voluntary Protection Program is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Al Woodson at (202) 693–2589.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Voluntary Protection Programs (VPP) (47 FR 29025) adopted by OSHA established the efficacy of cooperative action among government, industry, and labor to address worker safety and health issues and to expand worker protection. To quality, employers must meet OSHA's rigorous safety and health management criteria which focus on comprehensive management systems and active employee involvement to prevent or control worksite safety and health hazards. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance, and set their own more stringent standards, wherever necessary, to improve employee protection.

Prospective VPP worksites must submit an application that includes:

- General site information (*i.e.,* site, corporate, and collective bargaining contact information).
- Injury and illness rate performance information (*i.e.,* number of employees and/or applicable contractors onsite, type of work performed and products produced, Standard Industrial Code, and Recordable Injury and Illness Case Incidence Rate information).
- Safety and health program information (*i.e.,* description of the site's safety and health management system including how the system successfully addresses management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training).

OSHA uses this information to determine whether a worksite is ready for a VPP onsite evaluation and as a verification tool during VPP onsite evaluations. Without this information, OSHA would be unable to determine which sites are ready for VPP status.

Each current VPP worksite is also required to submit an annual evaluation, in narrative format, that addresses how that site is continuing its adherence to programmatic requirements. OSHA needs this information to ensure that the worksite remains qualified to participate in the VPP in the three to five years between onsite evaluations. Without this information, OSHA would be unable to determine whether sites are maintaining excellent safety and health management systems during this interim period.

The Occupational Safety and Health Administration (OSHA) is introducing the OSHA Challenge and VPP Corporate Pilot programs. The length of these pilots is planned for two years. However, after the first year OSHA will conduct evaluations to determine whether to continue, modify, or terminate these pilots. These new initiatives will expand programs to promote the safety and health of thousands of workers across the nation.

OSHA Challenge is designed to reach and guide employers and companies in all major industry groups who are strongly committed to improving their

safety and health management systems and interested in pursuing recognition in VPP. OSHA Challenge provides participants a guide or roadmap to improve performance and ultimately to achieve VPP Merit or Star approval. OSHA Challenge outlines the requirements needed to develop and implement effective safety and health management systems through incremental steps. At each stage, certain actions, documentation and outcomes are required in the areas covered by VPP criteria. Participants receive recognition from OSHA at the completion of each stage.

Each Challenge Pilot Administrator is required to submit to OSHA electronically a Challenge Pilot Administrator's application package, Administrator's Statement of Commitment, Challenge Pilot Administrator's Information Form, Challenge Pilot Administrator's Quarterly Report (if there have been significant changes to any of its participant's sites), Challenge Pilot Administrator's Annual Report (the Challenge Pilot Administrator must prepare and submit the annual report electronically to OSHA).

The VPP Corporate Pilot is designed to provide a more efficient process for Corporations to increase their level of participation in VPP. The pilot concept is two-fold; the Corporations submit an application that describes corporate level policies and programs that are uniformly applied at facilities across the Corporation. A comprehensive Corporate Program Evaluation is conducted by OSHA to verify the contents of the application. Once a Corporation is accepted in the VPP Corporate Pilot, all eligible corporate facilities will apply for VPP participation using more efficient streamlined application and onsite evaluation processes. Corporations accepted in the VPP Corporate Pilot must submit an annual safety and health report.

VPP worksite employees may apply to participate in the Special Government Employee Program. The Special Government Employee Program was established as a means to leverage OSHA's limited resources. Through this program, safety and health professionals employed at VPP sites are trained to participate as team members during VPP onsite evaluations. In that capacity, Special Government Employees may review company documents, assist with worksite walkthroughs, interview employees, and assist in preparing VPP onsite evaluation reports. Potential Special Government Employees must submit a Special Government Employee's application that includes:

- General contact information (*i.e.,* applicant's name, professional credentials, site/corporate contact information, etc.).
- A resume or the Optional Application for Federal Employment (OF–612) form.
- Confidential Financial Disclosure Report (OGE Form 450).
- Waiver of Claims against the Government.
- Department of Labor Request for Name Check (DL–68).

OSHA uses the contact information to arrange for Special Government Employee participation at VPP onsite evaluations, send congratulatory letters, and inform them of their status in the program. The resume or OF–612 and the DL–68 are used to determine whether an applicant is qualified to participate in the Special Government Employees Program. The OGE Form 450 is used to ensure that Special Government Employees do not participate in evaluations at sites where there may be a conflict of interest. The Waiver of Claims against the Government protects OSHA against liability.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OHSA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information (paperwork) requirements necessitated by the Voluntary Protection Programs. The Agency will include this summary in its request to OMB to extend the approval of these collections of information requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Voluntary Protection Programs Application Information.

OMB Number: 1218–0239.

Affected Public: Business or other for-profits; and individuals or households.

Number of Respondents:

VPP
- 278 applications
- 1,000 annual evaluations

OSHA Challenge
- 10 applications from Challenge Pilot Administrators
- 100 applications from Challenge Pilot Candidates

VPP Corporate
- 7 applications from VPP Corporations
- 70 applications from VPP Corporate Facilities

Special Government Employees
- 101 applications from SGEs

Total Respondents: 1,773.

Frequency: VPP applications, Challenge Pilot Administrator's applications, Challenge Pilot Candidate application, VPP Corporate Pilot applications and VPP Corporate Pilot Facility VPP applications are submitted once, Challenge Pilot Administrator's Quarterly Reports are submitted quarterly (if there have been significant changes to any of its participant's sites), VPP annual Evaluations, Challenge Pilot Administrator's Annual Report, and Corporate Safety and Health Report are submitted once per year, and Special Government Employee applications are submitted once every three years.

Average Time Per Response:

VPP General
- 200 hours for VPP applications
- 20 hours for VPP evaluations

OSHA Challenge
- 5 hours for Challenge Pilot Administrator applications
- 10 hours for Challenge Pilot Candidate applications
- 5 hours for Challenge Pilot Candidate quarterly reports
- 20 hours for Challenge Pilot Candidate annual reports

VPP Corporate
- 120 hours for VPP Corporation's applications
- 80 hours for VPP Corporate facility applications
- 40 hours for VPP Corporation's annual reports

Special Government Employees (SGE)
- 8 minutes for SGE applications
- 10 minutes for DL–69 Request for Name Check

Estimated Total Burden Hours:

VPP General
- 55,600 hours for VPP applications
- 20,000 hours for VPP annual evaluations

OSHA Challenge
- 50 hours for Challenge Administrator's applications
- 1,000 hours for Challenge Pilot Candidate's applications

1,500 hours for Challenge Candidate's quarterly reports
2,000 hours for Challenge Candidate's annual reports
VPP Corporate
840 hours for Corporation's applications
5,600 hours for Corporate VPP facility applications
280 hours for Corporate facility annual reports
Special Government Employees (SGE)
13 hours for SGE applications
17 hours for DL–68 Request for Name Check

Total Burden Hours per year (3-year average): 86,900.

Estimated Cost (Operation and Maintenance): $0.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed in Washington, DC, on November 9th, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–25407 Filed 11–15–04; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet November 20, 2004. The Board of Directors will convene following the preceding meeting of the Finance Committee, which is expected to conclude at approximately 11 a.m. It is possible that the meeting of the Board of Directors may convene earlier or later than expected, depending upon the length of the aforementioned committee meeting.

LOCATION: The Westin Cincinnati, 21 E. 5th Street, Cincinnati, Ohio.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by 5 U.S.C. 552b(c)(2) and LSC's corresponding regulation 45 CFR 1622.5(a); 5 U.S.C. 552b(c)(6) and LSC's corresponding regulation 45 CFR 1622.5(e); 5 U.S.C. 552b(c)(7) and LSC's implementing regulation 45 CFR 1622.5(f)(4), and 5 U.S.C. 522b(c)(9)(B) and LSC's implementing regulation 45 CFR 1622.5(g); and 5 U.S.C. 552b(c)(10) and LSC's corresponding regulation 45 CFR 1622.5(h). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of September 11, 2004.
3. Approval of minutes of the Board's executive session of September 11, 2004.
4. Approval of minutes of the Search Committee meetings of:
(a) June 5, 2004;
(b) July 19, 2004; and
(c) August 12, 2004.
5. Approval of minutes of Board's executive session of June 5, 2004.
6. Consider and act on Resolution dissolving the Ad Hoc Search Committee for LSC President and Inspector General.
7. Chairman's Report.
8. Members' Reports.
9. President's Report.
10. Inspector General's Report.
11. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
12. Consider and act on the report of the Board's Operations & Regulations Committee.
13. Consider and act on the report of the Board's Finance Committee.
14. Consider and act on the report of the Board's Performance Reviews Committee.
15. Consider and act on Inspector General's Semiannual Report to Congress for the period of April 1–September 30, 2004, and LSC's Response.
16. Consider and act on the dates and locations of the Board's meetings for calendar year 2005.
17. Consider and act on other business.
18. Public comment.

Closed Session

19. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
20. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
21. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: November 11, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–25483 Filed 11–12–04; 12:25 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet November 20, 2004. The meeting will commence immediately following conclusion of the meeting of the Operations and Regulations Committee, the deliberations of which are anticipated to terminate at approximately 10 a.m. It is possible that the Committee meeting may convene earlier or later than expected, depending upon when the preceding committee concludes its business.

LOCATION: Westin Cincinnati, 21 E. 5th Street, Cincinnati, Ohio.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 10, 2004.
3. Presentation of LSC's Financial Reports for the Twelve-Month Period Ending September 30, 2004.
4. Update on the status of the FY 2005 Revised Temporary Operating Budget.

Closed Session

5. Briefing [1] by the Inspector General on the budget of the Office of the Inspector General.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting''

6. Briefing by management on implications of increasing coverage limits under LSC's Directors & Officers liability insurance policy.

Open Session

7. Consider and act on increasing the coverage limits under LSC's Directors & Officers liability insurance policy.
8. Consider and act on other business.
9. Public comment.
10. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: November 11, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–25484 Filed 11–12–04; 12:25 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on Performance Reviews of the President and Inspector General

TIME AND DATE: The Ad Hoc Committee on Performance Reviews of the President and Inspector General of the Legal Services Corporation's Board of Directors will meet on November 19, 2004. The meeting will begin at approximately 1:30 p.m., and continue until conclusion of the committee's agenda. It is possible that the Committee meeting may convene earlier or later than expected, depending upon when the Board of Directors concludes its lunch.

LOCATION: Westin Cincinnati, 21 E. 5th Street, Cincinnati, Ohio.

STATUS OF MEETING: Closed. The meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act (5 U.S.C. 552b(c)(2) and (6)) and the Legal Services Corporation's corresponding regulation 45 CFR 1622.5(a) and (e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Closed Session

1. Approval of agenda.
2. Consider and act on internal procedures for annual performance evaluations of LSC President and Inspector General.
3. Consider and act on other business.
4. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: November 11, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–25485 Filed 11–12–04; 12:25 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Provision for the Delivery of Legal Services Committee

TIME AND DATE: The Provision for the Delivery of Legal Services Committee of the Legal Services Corporation Board of Directors will meet on November 19, 2004. The meeting will begin at approximately 1:30 p.m., and continue until conclusion of the committee's agenda. It is possible that the Committee meeting may convene earlier or later than expected, depending upon when the Board of Directors concludes its lunch.

LOCATION: The Westin Cincinnati, 21 E. 5th Street, Cincinnati, Ohio.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of September 10, 2004.
3. Presentations by Kentucky Legal Aid of the Bluegrass (LABG) on their efforts and specific activities to improve quality legal services, including:

a. Welcome by Howard Tankersley, LABG Vice President and President-elect of the Northern Kentucky Bar Association;

b. Overview of LABG by Richard (''Dick'') Cullison, LABG Executive Director;

c. Report on LABG's Immigrant Domestic Violence Prevention Project by Lea Webb, LABG Staff Attorney, and Holly Delaney, LABG's Interpreter and Immigration Specialist, including a presentation by LABG Spanish-speaking client, Marisol de la Borda;

d. Report on the Kentucky LSC programs' coordinated response to protect the rights of elderly clients who were about to be evicted from their nursing home due to a Medicaid crisis in Kentucky; and

e. Discussion of the crisis in funding in legal services program in the South by Dick Cullison.

4. Report on status of Mentoring Project.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: November 11, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–25486 Filed 11–12–04; 12:24 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet November 19, 2004 and November 20, 2004. On Friday, November 19, 2004, the meeting will begin immediately following conclusion of the Provision for the Delivery of Legal Services Committee's meeting, which is scheduled to conclude its deliberations at approximately 3:30 p.m. On Saturday, November 20, 2004, the Operations and Regulations Committee will reconvene its meeting at approximately 9 a.m., and continue until conclusion of the committee's agenda.

LOCATION: Westin Cincinnati, 21 E. 5th Street, Cincinnati, Ohio.

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and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See* also 45 CFR 1622.2 & 1622.3.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of September 11, 2004.
3. Consider and act on Notice of Proposed Rulemaking on financial eligibility, 45 CFR part 1611.
a. Staff report; and
b. Public comment.
4. Consider and act on Mr. Dean Andal's petition for rulemaking to amend LSC regulations on Class Actions, 45 CFR part 1617.
a. Presentation by Mr. Dean Andal;
b. Staff report; and
c. Public comment.

Closed Session

5. Briefing [1] by LSC President on proposed changes to organizational structure.
6. Briefing by Inspector General on OIG's plan to look at the internal operations of all components of LSC to determine whether there are opportunities for improvements in efficiency and effectiveness.

Open Session

7. Consider and act on proposed changes to organizational structure.
a. Staff report; and
b. Public comment.
8. Other public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: November 11, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–25487 Filed 11–12–04; 12:24 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–126)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW, Mail Code V, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting approval for a new collection that will be used to voluntary collect ideas from the general public about ways to fulfill NASA's technology development challenges.

II. Method of Collection

NASA will utilize electronic methods to collect this information, via an on-line Web based form.

III. Data

Title: Centennial Challenges Idea Submission Web Forms.
OMB Number: 2700-.
Type of review: New collection.
Affected Public: Individuals or households.
Estimated Number of Respondents: 300.
Estimated Time Per Response: .25 hours.
Estimated Total Annual Burden Hours: 75.
Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Dated: November 8, 2004.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 04–25333 Filed 11–15–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 3, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal

memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *records.mgt@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. National Archives and Records Administration, Government-wide (N1–GRS–05–1, 16 items, 15 temporary items). Revision to General Records Schedule 20, Items 2, 3, and 11. This revision expands the coverage of Item 2, input/source records, so it includes hard copy documents, such as correspondence, memorandums, and reports, that have been scanned into an electronic recordkeeping system. Item 3, electronic versions of previously scheduled records, has been expanded to provide disposal authority for the electronic versions of most temporary records that have NARA-approved retention periods that are less than twenty years. (Agencies must submit schedules to NARA for electronic versions of most records with NARA-approved retention periods of twenty years or more.) This schedule also revises Item 11, documentation, so that it provides for the permanent retention of the documentation associated with electronic records that are approved for permanent retention.

Dated: November 9, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–25327 Filed 11–15–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 3, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *records.mgt@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape,

and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Forest Service; Department of the Interior, Bureau of Land Management, Fish and Wildlife Service, and National Park Service (N1–95–05–2, 5 items, 3 temporary items). Administrative records relating to operational actions taken in the management of fire incidents on Federal lands. Included are such records as interim status reports, inspection checklists, unit logs, logistics documents, and cost estimates. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of individual fire reports and fire package-incident history files, which document significant incidents and events, actions taken, lessons learned and contain other important information on fire suppression and the management of natural resources on Federal lands. This schedule was developed jointly by the Forest Service, the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service and is applicable to the fire incident records each of these agencies accumulates.

2. Department of Agriculture, Forest Service (N1–95–05–1, 10 items, 6 temporary items). Inputs and outputs associated with the National Interagency Fire Management Integrated Database (NIFMID), an electronic system containing wild land fire reports and weather information. Also included are inputs, outputs, data, and documentation associated with the Fire Statistics System. The data contained in the NIFMID system, which includes information entered from the Fire Statistics System, is proposed for permanent retention along with the related system documentation.

3. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–19, 6 items, 6 temporary items). Inputs, outputs, master files, and system documentation associated with an electronic system used to track the receipt and analysis of lab samples received by the agency. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of the Air Force, Agency-wide (N1–AFU–03–22, 8 items, 8 temporary items). Records relating to offenses resulting in court martial and other disciplinary actions. Also included are electronic copies of records created using electronic mail and word processing. Information included in these records was previously approved for permanent retention in a recordkeeping system maintained by the Defense Manpower Data Center that includes data drawn from all Defense Department components.

5. Department of Homeland Security, Transportation Security Administration (N1–560–04–17, 25 items, 25 temporary items). Records relating to the safety of agency working conditions. Included are such records as technical standards, safety and health investigations files, industrial hygiene assessments, recommendations regarding field operations, safety analysis and prevention programs records, workers compensation claims, employee complaints files, records regarding the collection and disposal of hazardous waste materials at airport screening areas, policy development records, annual reports, program evaluation records, training materials, and other administrative records accumulated by the agency's Office of Occupational Safety, Health and Environment. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of Justice, Federal Bureau of Investigation (N1–65–04–4, 1290 items, 305 temporary items). Comprehensive revision of the agency's records control schedule to include electronic copies of records created using electronic mail and word processing and apply to case files accumulated by lead investigative offices the disposition instructions previously approved for files accumulated at agency headquarters. This change reflects the fact that lead investigative offices now maintain a complete copy of every investigative case file, as opposed to headquarters. This schedule continues to provide for the permanent retention in lead investigative offices of recordkeeping copies of selected case files in investigative case classifications which contained permanent authorities previously. Selection criteria were approved by NARA in earlier agency records disposition schedules.

7. Department of State, Office of the Secretary of State (N1–59–04–8, 1 item, 1 temporary item). Program files of the Ombudsman for Civil Service Employees, an office which is now defunct.

8. Armed Forces Retirement Home, Agency-wide (N1–231–04–01, 10 items, 4 temporary items). Records relating to budget and financial matters. Electronic copies of records created using electronic mail and word processing that are associated with these and other agency activities are included. Proposed for permanent retention are recordkeeping copies of such records as files relating to the agency's mission and organization, publications and reports, still pictures, and files relating budget and finance policy. This schedule authorizes the agency to apply the proposed disposition instructions to records regardless of medium.

9. Environmental Protection Agency, Office of Environmental Information (N1–412–05–1, 7 items, 7 temporary items). Electronic software programs, electronic data, and system

documentation associated with the Integrated Error Correction Process Database, which is used in the identification, tracking, and resolution of environmental data errors.

10. Environmental Protection Agency, Office of Solid Waste and Emergency Response (N1–412–05–2, 8 items, 5 temporary items). Electronic software programs, inputs, graphics, and audit and user-defined data associated with an electronic system that contains information relating to risk management plans submitted to the agency pursuant to Section 112(r) of the Clean Air Act. Proposed for permanent retention are electronic versions of risk management plans and executive summaries, along with the related system documentation.

11. Environmental Protection Agency, Office of Solid Waste and Emergency Response (N1–412–05–3, 2 items, 2 temporary items). Records relating to the implementation of risk management plans submitted pursuant to Section 112(r) of the Clean Air Act. Included are such records as risk management plans, facility audit reports, correspondence, and electronic copies of documents created using electronic mail and word processing.

12. General Services Administration, Public Buildings Service (N1–121–04–1, 4 items, 4 temporary items). Case files containing fiscal reports, approval letters, forms, and correspondence relating to capital projects, including imaged copies. Also included are electronic copies of records created using electronic mail or word processing.

13. National Archives and Records Administration, Office of General Counsel (N1–64–05–1, 17 items, 14 temporary items). Files relating to legal operations, including such matters as legal opinions that do not set precedents, litigation that is not historically significant, ethics programs, and Freedom of Information Act activities. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of legal opinions that set precedents, significant litigation cases, and policy files relating to the Presidential Records Act.

14. U. S. Commission on Ocean Policy, Agency-wide (N1–220–05–1, 8 items, 4 temporary items). Files accumulated by members of the Commission excluding the chairman, working papers and research materials, electronic copies of records created using electronic mail and word processing, and records relating to the Commission's web site, including content, system documentation, and web site policy and planning records. Proposed for permanent retention are recordkeeping copies of such files as Commission meeting minutes and testimony, annual reports, reports on research projects, and records accumulated by the chairman of the Commission, including correspondence, press releases, and interoffice memorandums.

Dated: November 5, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–25329 Filed 11–15–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

DATES: December 1, 2004, from 10 a.m. to 11 a.m.

ADDRESSES: The U.S. Capitol Building, Room S–312, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard H. Hunt, Director; Center for Legislative Archives; (202) 501–5350.

SUPPLEMENTARY INFORMATION:

Agenda:

Institute on Congress and American History.

Senate Governmental Affairs Committee Electronic Records.

Mail Irradiation Issues.

Activities Report of the Center for Legislative Archives.

Other current issues and new business.

The meeting is open to the public.

Dated: November 9, 2004.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 04–25328 Filed 11–15–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, November 18, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's Operating Budget for 2005/2006.
2. NCUA's Overhead Transfer Rate.
3. NCUA's Operating Fee Scale for 2005.
4. Proposed Rule: Section 701.21(e), (f), and (g) of NCUA's Rules and Regulations, Loans to Members and Lines of Credit to Members.
5. Final Rule: Parts 717 and 748 of NCUA's Rules and Regulations, Fair Credit Reporting—Disposal of Consumer Information.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, November 18, 2004.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), (9)(A)(ii), and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 04–25449 Filed 11–10–04; 4:06 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Design (Leadership Initiative—Governors' Institute for Regional Design): November 29, 2004, Room 729. This meeting, to be held by teleconference from 4 p.m. to 7 p.m. e.s.t., will be closed.

Design (Access to Artistic Excellence): December 14–15, 2004, Room 730. A portion of this meeting, from 1 p.m. to 2 p.m. on December 15th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 5 p.m. on December 14th, and from 9 a.m. to 1 p.m. and from 2 p.m. to 3 p.m. on December 15th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c)(6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: November 9, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–25338 Filed 11–15–04; 8:45 am]

BILLING CODE 7537–01–U

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 3, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 1, 2004, deadline.

2. *Date:* December 6, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 1, 2004, deadline.

3. *Date:* December 7, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 1, 2004 deadline.

4. *Date:* December 7, 2004.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for National Digital Newspaper Program, submitted to the Division of Preservation and Access at the October 15, 2004, deadline.

5. *Date:* December 9, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 1, 2004, deadline.

6. *Date:* December 10, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 1, 2004, deadline.

7. *Date:* December 13, 2004.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 1, 2004, deadline.

8. *Date:* December 15, 2004.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowship Programs at Independent Research Institutions, submitted to the Division of Research Programs at the September 1, 2004, deadline.

9. *Date:* December 15, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2004, deadline.

10. *Date:* December 20, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2004, deadline.

Michael McDonald,

Acting Advisory Committee, Management Officer.

[FR Doc. 04–25342 Filed 11–15–04; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Comprehensive Environmental Evaluations for Antarctic Activities

AGENCY: National Science Foundation (NSF).

ACTION: Notice.

SUMMARY: National Science Foundation gives notice of the availability of a Final Environmental Impact Statement/Comprehensive Environmental Evaluation (FEIS/FCEE) for activities proposed to be undertaken in Antarctica.

DATES: The waiting period ends January 18, 2005.

ADDRESSES: Dr. Polly A. Penhale, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, *ppenhale@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Environmental Officer, Office of Polar Programs, (703) 292–8033, *ppenhale@nsf.gov.*

SUPPLEMENTARY INFORMATION: Article 3 of Annex I to the Protocol on Environmental Protection of the Antarctic Treaty requires the preparation of an EIS/CEE for any proposed Antarctic activity likely to have more than a minor or transitory impact. The Draft EIS/CEE for Project IceCube was made publicly available and comments were accepted during a 90-day comment period, as specified in 45 CFR 641.18(c). The Final EIS/CEE containing comments received on the Draft EIS/CEE and responses to these comments, is now publicly available and has been circulated to all Parties to the Protocol and parties that commented on the Draft EIS/CEE. This notice is published pursuant to 16 U.S.C. 2403a.

The National Science Foundation has submitted this Final EIS/CEE, for the operation of a high-energy neutrino telescope (Project IceCube) at the South Pole. The document is available on the Internet at *http://www.nsf.gov/od/opp/antarct/treaty/cees/icecube/icecube_final_cee.pdf.*

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–24965 Filed 11–15–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–36]

Notice of License Amendment Request of Westinghouse Electric Company, LLC, Festus, MO, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Amir Kouhestani, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–0023; fax number: (301) 415–5398; e-mail: *aak@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated October 5, 2004, a request from Westinghouse Electric Company, LLC, (WEC as the licensee) to amend Chapter 1 of Special Nuclear Materials License (No. SNM–33) to allow dismantlement and demolition of the building complexes at its Hematite facility located in Festus, Missouri. License No. SNM–33 authorizes the licensee to conduct certain decontamination activities necessary to reduce the current inventory of Atomic Energy Act materials, *e.g.,* packaging and shipping materials and to engage in activities necessary to plan for decommissioning of the site, *e.g.,* site characterization and maintaining the site in a safe condition pending license termination. However, the licensee is prohibited from performing building demolition, soil and groundwater remediation, and conducting final status surveys until these activities are approved by a specific license amendment or an NRC-approved Decommissioning Plan. Specifically, the licensee requests authorization to dismantle and demolish Hematite facility buildings 101, 110, 115, 120, 230, 231, 235, 240, 245, 252, 253, 254, 255, 256, 260, and 261, all located on approximately ten acres of land at the Westinghouse Hematite facility.

An NRC administrative review, documented in a letter to Westinghouse dated October 14, 2004, found the amendment request acceptable to begin a technical review. If approved, the authorization to dismantle and demolish building, will be documented in an amendment to NRC License No. SNM–33. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment to Special Nuclear Materials License No. SNM–33 to allow dismantlement and demolition of the building complexes at the WEC Hematite facility located in Festus, Missouri. In accordance with the general requirements in subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal work days;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Westinghouse Electric Company, 3300 State Road P, Festus, Missouri 63028, Attention: Mr. Henry A. Sepp, Project Director; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov*.

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by January 18, 2005.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309 (b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309 (f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309 (f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309 (g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice is ML042860234. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, located in O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

''Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available

documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Document Room is located at NRC Headquarters in Rockville, MD, and can be contacted at 800–397–4209 or 301–415–4737 or pdr@nrc.gov.''

Dated in Rockville, Maryland, this 9th day of November, 2004.

For the Nuclear Regulatory Commission.

Claudia Craig,

Acting Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–25364 Filed 11–15–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–19353]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Inficon, Inc.'s Facility in Fairfield, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Kathy Dolce Modes, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5251, fax (610) 337–5269; or by e-mail: *KAD@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to INFICON, Inc. (INFICON) for Materials License No. 29–20512–01 to authorize release of its facility in Fairfield, New Jersey for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the action is to authorize the release of the licensee's Fairfield, New Jersey facility for unrestricted use. INFICON was authorized by NRC from February 1999 to use radioactive materials for manufacturing and distribution purposes at the Fairfield, New Jersey site. On July 29, 2004, INFICON requested that NRC release the facility for unrestricted use. INFICON has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted use. INFICON will continue licensed activities at another location, as authorized by the license.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by INFICON. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release the facility for unrestricted use. The NRC staff has evaluated INFICON's request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC–Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment [ADAMS Accession No. ML042990044], letter transmitting Final Status Survey Results dated July 29, 2004 [ADAMS Accession No. ML042120036], and supplemental information contained in letters dated August 11, 2004 [ADAMS Accession No. ML042390402] and September 22, 2004 [ADAMS Accession No. ML042710102]. Please note that on October 25, 2004, the NRC terminated public access to ADAMS and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS. The NRC Public Documents Room is located at NRC Headquarters in Rockville, MD, and can be contacted at (800) 397–4209, (301) 415–4737 or by e-mail to ''*pdr@nrc.gov.*''

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at King of Prussia, Pennsylvania this 8th day of November, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Materials Security & Industrial Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–25358 Filed 11–15–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–53 EA–04–186]

In the Matter of Exelon Generation Company, LLC, Quad Cities Nuclear Power Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order for implementation of additional security measures associated with access authorization.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Quad Cities Nuclear Power Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

Exelon Generation Company (Exelon) holds a license issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR) part 50 and 10 CFR part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Exelon to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to or greater than any other person to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order has been issued to all licensees who currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1[1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework.

In order to provide assurance that Exelon is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, Exelon's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. Exelon shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the Exelon's security plan. Exelon shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than 180 days from the date of this Order with the exception of the additional security measures B.4, which shall be implemented no later than 365 days from the date of this Order, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. Exelon shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause Exelon to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Exelon's justification for seeking relief from or variation of any specific requirement.

2. If Exelon considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, Exelon must notify the Commission, within

[1] Attachment 1 contains Safeguards Information and will not be released to the public.

twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, Exelon must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C.1. Exelon shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. Exelon shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Exelon's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Exelon of good cause.

IV

In accordance with 10 CFR 2.202, Exelon must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region III at 2443 Warrenville Road, Suite 210, Lisle, IL 60532; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Exelon requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Exelon or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Exelon may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 9th day of November 2004.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–25362 Filed 11–15–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–53; EA–04–184]

In the Matter of Exelon Generation Company, LLC, Quad Cities Nuclear Power Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Interim Safeguards and Security Compensatory Measures.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Quad Cities Nuclear Power Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

Exelon Generation Company (Exelon) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR part 50, and 10 CFR part 72. This Order is being issued to Exelon who has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Exelon to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific

safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1[1] of this Order, on Exelon who has indicated near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at Exelon's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. Exelon's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, It is hereby ordered, effective immediately, that your general license is modified as follows:

A. Exelon shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. Exelon shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before spent fuel is initially placed in the ISFSI.

B.1. Exelon shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. If Exelon considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, Exelon must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement(s) in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, Exelon must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. Exelon shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Exelon shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Exelon's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by Exelon of good cause.

IV

In accordance with 10 CFR 2.202, Exelon must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the

[1] Attachment 1 contains Safeguards Information and will not be released to the public.

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region III at 2443 Warrenville Road, Suite 210, Lisle, IL 60532; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Exelon requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Exelon or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Exelon may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for a hearing shall not stay the immediate effectiveness of this order.

Dated this 9th day of November 2004.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–25363 Filed 11–15–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–54 and EA–04–187]

In the Matter of Omaha Public Power District Fort Calhoun Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order for implementation of additional security measures associated with access authorization.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Fort Calhoun Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

Omaha Public Power District (OPPD) holds a license issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI) in accordance with the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR) part 50 and 10 CFR part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require OPPD to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to or greater than any other person to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order has been issued to all licensees who currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements which emerged from the NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the

[1] Attachment 1 contains safeguards information and will not be released to the public.

October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework.

In order to provide assurance that OPPD is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, OPPD's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. OPPD shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the OPPD's security plan. OPPD shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than 180 days from the date of this Order with the exception of the additional security measures B.4, which shall be implemented no later than 365 days from the date of this Order, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

B.1. OPPD shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause OPPD to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide OPPD's justification for seeking relief from or variation of any specific requirement.

2. If OPPD considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, OPPD must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, OPPD must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C.1. OPPD shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. OPPD shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

OPPD's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by OPPD of good cause.

IV

In accordance with 10 CFR 2.202, OPPD must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement, at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region IV, at 611 Ryan Plaza, Suite 400, Arlington, TX 76011–8064; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the OPPD requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by OPPD or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), OPPD may, in addition to demanding a hearing at the time the answer is filed

or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 9th day of November 2004.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–25360 Filed 11–15–04; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72–54; EA–04–185]

In the Matter of Omaha Public Power District Fort Calhoun Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order for implementation of interim safeguards and security compensatory measures.

FOR FURTHER INFORMATION CONTACT: Cynthia Barr, Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–4015; fax number: (301) 415–8555; e-mail *CSB2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear Regulatory Commission (NRC) is providing notice in the matter of Fort Calhoun Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately).

II. Further Information

I

Omaha Public Power District (OPPD) has been issued a general license by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing storage of spent fuel in an independent spent fuel storage installation (ISFSI) in accordance with the Atomic Energy Act of 1954, 10 CFR part 50, and 10 CFR part 72. This Order is being issued to OPPD who has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require OPPD to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1[1] of this Order, on OPPD who has indicated near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at OPPD's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. OPPD's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, it is hereby ordered, effective immediately, that your general license is modified as follows:

A. OPPD shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in their security plan. OPPD shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before spent fuel is initially placed in the ISFSI.

B.1. OPPD shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. If OPPD considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, OPPD must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement(s) in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, OPPD must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C.1. OPPD shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. OPPD shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

OPPD's responses to Conditions B.1, B.2, C.1, and C.2, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Material Safety and Safeguards may, in writing, relax or rescind any of the above conditions upon demonstration by OPPD of good cause.

IV

In accordance with 10 CFR 2.202, OPPD must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region IV, at 611 Ryan Plaza, Suite 400, Arlington, TX 76011–8064; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than OPPD requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by OPPD or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), OPPD may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 9th day of November 2004.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–25361 Filed 11–15–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of November 15, 22, 29, December 6, 13, 20, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 15, 2004

Tuesday, November 16, 2004

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

Thursday, November 18, 2004

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of November 22, 2004—Tentative

There are no meetings scheduled for the week of November 22, 2004.

Week of November 29, 2004—Tentative

There are no meetings scheduled for the week of November 29, 2004.

Week of December 6, 2004—Tentative

Tuesday, December 7, 2004

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Corenthis Kelley, (301) 415–7380).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, December 8, 2004

1 p.m. Briefing on Status of Davis Besse Lessons Learned Task Force Recommendations (Public Meeting) (Contact: John Jolicoeur, (301) 415–1724).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, December 9, 2004

2 p.m. Briefing on Reactor Safety and Licensing Activities (Public Meeting) (Contact: Steve Koenick, 301–415–1239).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 13, 2004—Tentative

Tuesday, December 14, 2004

1 p.m. Briefing on Emergency Preparedness Program Initiatives (Public Meeting) (Contact: Nader Mamish, (301) 415–1086).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m. Briefing on Emergency Preparedness Program Initiatives (Closed—Ex. 1).

Week of December 20, 2004—Tentative

There are no meetings scheduled for the Week of December 20, 2004.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 10, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–25503 Filed 11–12–04; 1:32 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 3, OMB Control No. 3235–0104, SEC File No. 270–125.

Form 4, OMB Control No. 3235–0287, SEC File No. 270–126.

Form 5, OMB Control No. 3235–0362, SEC File No. 270–323.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Exchange Act Forms 3, 4, and 5 are filed by insiders of public companies that have a class of securities registered under Section 12 of the Exchange Act. Form 3 is an initial statement of beneficial ownership of securities, Form 4 is a statement of changes in beneficial ownership of securities and Form 5 is an annual statement of beneficial ownership of securities. Approximately 29,000 insiders file Form 3 annually and it takes approximately .50 hours to prepare for a total of 14,500 annual burden hours. Approximately 225,000 insiders file Form 4 annually and it takes approximately .50 hours to prepare for a total of 112,500 annual burden hours. Approximately 12,000 insiders file Form 5 annually and it takes approximately one hour to prepare for a total of 12,000 annual burden hours. Form 3, Form 4, and Form 5 information collections are mandatory and available to the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission: *drostker@omb.eop.gov,* and (ii) R. Corey Booth, Director/Chief Information, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 5, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–25383 Filed 11–15–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Regulation S—OMB Control No. 3235–0357—SEC File No. 270–315;

Rule 13e–3 (Schedule 13E–3)—OMB Control No. 3235–0007—SEC File No. 270–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Regulation S (OMB Control No. 3235–0357; SEC File No. 270–315) includes rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933. The purpose of Regulation S is to provide clarification of the extent to which Section 5 of the Securities Act applies to sales and re-sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

Rule 13e–3 and Schedule 13E–3 (OMB Control No. 3235–0007; SEC File No. 270–1)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Schedule 13E–3 provides shareholders and the marketplace with information concerning going private transactions that is important in determining how to respond to such transactions. The information collected permits verification of compliance with securities laws requirements and

ensures the public availability and dissemination of the collected information. This information is made available to the public. Information provided on Schedule 13E–3 is mandatory. Approximately 600 issuers file Schedule 13E–3 annually and it takes approximately 137.25 hours per response for a total of 82,350 annual burden hours. It is estimated that 25% of the 82,350 total burden hours (20,588 burden hours) is prepared by the company. The remaining 75% of the total burden is attributed to outside cost.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission: *David__Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 5, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3166 Filed 11–15–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 52—SEC File No. 270–81—OMB Control No. 3235–0369.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collections of information discussed below.

Rule 52 permits public utility subsidiary companies of registered holding companies to issue and sell certain securities without filing a declaration if certain conditions are met. The Commission estimates that the total annual reporting and recordkeeping burden of collections under rule 52 is 133 hours (*i.e.,* 133 responses × one hour = 133 burden hours).

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

There is no recordkeeping requirement for this information collection. It is mandatory that qualifying companies provide the information required by rule 52. There is no requirement to keep the information confidential because it is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David__Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB with 30 days of this notice.

Dated: November 3, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3167 Filed 11–15–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Part 257—SEC File No. 270–252—OMB Control No. 3235–0306.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the matters relating to the previously approved collections of information discussed below.

Part 257 (17 CFR part 257) under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.,* generally mandates the preservation, and provides for the destruction, of books and records of registered public utility holding companies subject to rule 26 under the Act and service companies subject to rule 93. Part 257 prescribes which records must be maintained for regulatory purposes and which media methods may be used to maintain them. Further, it sets a schedule for destroying particular documents or classes of documents.

The Commission estimates that there is an associated recordkeeping burden of 29 hours in connection with the record preservation programs administered by registered holding companies under part 257 (29 recordkeepers × 1 hour = 29 burden hours). In addition to the costs associated with the burden hours, the annual non-labor cost associated with complying with part 257 is estimated at $2,000 for each registered holding company system. The total estimated annual non-labor recordkeeping burden is $58,000 (29 recordkeepers × $2,000 = $58,000).

It is mandatory that records that are subject to part 257 under the Act be maintained by the holding companies and their service companies for the prescribed period. There is no requirement to keep the information related to part 257 confidential, because it is public information. It should be noted that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 4, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3168 Filed 11–15–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26653; 812–12980]

Pacific Capital Funds and the Asset Management Group of Bank of Hawaii; Notice of Application

November 9, 2004.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Pacific Capital Funds (the ''Trust'') and The Asset Management Group of Bank of Hawaii (the ''Adviser'').

FILING DATE: The application was filed on May 29, 2003, and amended on September 17, 2004, and October 28, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 6, 2004, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Wendell M. Faria, Esq., Paul, Hastings, Janofsky & Walker LLP, 1299 Pennsylvania Avenue, NW., Tenth Floor, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently offers multiple series (each a ''Fund,'' and collectively, the ''Funds''), each of which has its own investment objectives, policies and restrictions.[1]

2. The Adviser, registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to each Fund pursuant to an investment advisory agreement with the Trust (''Advisory Agreement''), that was approved by the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the shareholders of each Fund. Under the terms of the Advisory Agreement, the Adviser provides each Fund with investment research, advice and supervision, and furnishes an investment program for each Fund consistent with the investment objectives and policies of the Fund. For its services, the Adviser receives a fee from each Fund based on the average daily net assets of the Fund. Under the Advisory Agreement, the Adviser may delegate investment advisory responsibilities to one or more subadvisers (''Subadvisers'') who have discretionary authority to invest all or a portion of the Fund's assets pursuant to a separate subadvisory agreement (''Subadvisory Agreement''). Each Subadviser is or will be an investment adviser registered under the Advisers Act. For its services to a Fund, the Fund pays a Subadviser a quarterly or monthly fee at an annual rate based on the average daily net assets of the Fund.

3. Applicants request relief to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Funds' shareholders will rely on the Adviser, subject to oversight by the Board, to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Funds and may preclude the Adviser from acting promptly in a manner considered

[1] Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or a person controlling, controlled by or under common control with the Adviser; (b) uses the management structure described in this application; and (c) complies with the terms and conditions of this application (included in the term ''Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Subadviser.

advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to the shareholder approval requirements in section 15(a) of the Act and rule 18f–2 under the Act.

4. Applicants note that the Commission recently adopted certain fund governance standards,[2] and applicants agree that each Fund will comply with the fund governance standards set forth in rule 0–1(a)(7) under the Act by the compliance date set forth in the Adopting Release. Applicants also note that the Commission has proposed rule 15a–5 under the Act and agree that the requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.[3]

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Each Fund will comply with the fund governance standards set forth in rule 0–1(a)(7) under the Act by the compliance date set forth in the Adopting Release (''Compliance Date''). Prior to the Compliance Date, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees. Any person who acts as legal counsel for the Independent Trustees will be an independent legal counsel, as defined in rule 0–1(a)(6) under the Act.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Shareholders of a Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Fund that have been approved by the shareholders of the Fund.

7. Within 90 days of the hiring of a new Subadviser, the Adviser will furnish shareholders of the affected Fund with all information about the new Subadviser that would be included in a proxy statement. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

8. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (iii) allocate and, when appropriate, reallocate a Fund's assets among multiple Subadvisers; (iv) monitor and evaluate the performance of the Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies, and restrictions.

9. No trustee or officer of the Funds, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

10. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3170 Filed 11–15–04; 8:45 am]

BILLING CODE 8010–01–P

[2] Investment Company Act Release No. 16520 (July 27, 2004) (''Adopting Release'').

[3] Investment Company Act Release No. 26230 (Oct. 23, 2003).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27909]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 9, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 6, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 6, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Harbert Distressed Investment Master Fund, Ltd. (70–10259)

Harbert Distressed Investment Master Fund, Ltd., c/o 555 Madison Avenue, 16th Floor, New York, NY 10022, on its own behalf and on behalf of funds and

managed accounts (''Harbert'' and ''Applicant''), has filed an application (''Application'') requesting an exemption under section 3(a)(4) of the Act from all provisions of the Act except section 9(a)(2).

The Application is filed in connection with Harbert's anticipation that funds and accounts managed by it will receive, in the aggregate, more than 10% of the voting securities of a public-utility company, the reorganized NorthWestern Corporation (''NorthWestern'' and ''Debtor''), pursuant to Debtor's Second Amended and Restated Plan of Reorganization dated August 27, 2004 (''Plan of Reorganization'') under Chapter 11 of the United States Bankruptcy Code (''Chapter 11''), filed in the United States Bankruptcy Court for the District of Delaware (the ''Bankruptcy Court'').[1]

Harbert Management Corporation (''HMC''), founded in 1945, is a privately held firm that specializes in non-traditional money management activities. HMC serves pension trusts, endowments and foundations, pension funds, banks, insurance companies, family offices, and high net worth individuals. HMC has sponsored numerous funds, including Harbert. Harbert's investment team also manages a separate managed account, Alpha Sub US Fund VI, LLC (''Alpha''). HMC has a diversified portfolio of assets under management. Investments range across a wide variety of industries; diversification across asset classes is a fundamental goal.

HMC Investments, Inc., a wholly owned subsidiary of HMC, is a registered broker/dealer and member NASD, SIPC. The Harbinger Group, Inc., an indirect wholly owned subsidiary of HMC, is an investment advisor registered with the Commission.

Applicant states that neither HMC nor any of the funds or accounts managed by it is currently a ''public-utility company,'' a ''public-utility holding company,'' or an ''affiliate'' of a public-utility company or public-utility holding company within the meaning of the Act.

As detailed in the Disclosure Statement dated August 27, 2004 (''Disclosure Statement''), filed in connection with the Plan of Reorganization, NorthWestern is a stand-alone public-utility company engaged in the generation, transmission and distribution of electricity and the distribution of natural gas to approximately 608,000 customers in Montana, South Dakota and Nebraska. NorthWestern is subject to the jurisdiction of the Federal Energy Regulatory Commission with respect to the issuance of securities and the setting of wholesale electric rates. Its Montana operations are subject to the jurisdiction of the Montana Public Service Commission and its South Dakota operations, to the jurisdiction of the South Dakota Public Utilities Commission.

On September 14, 2003, NorthWestern filed a petition for relief under Chapter 11. In the succeeding eleven months, NorthWestern, as debtor-in-possession, negotiated with creditors, state regulators, and other parties, a plan of reorganization that provides for the reorganization of the utility as a stand-alone company. In so doing, NorthWestern has divested nearly all of its interests in nonutility businesses. Under the Plan of Reorganization, Northwestern's unsecured creditors will receive *pro rata* distributions of all of the common stock of a reorganized NorthWestern (subject only to dilution by relatively small amounts of stock issued pursuant to a management incentive plan). NorthWestern will continue to operate as a public-utility company.

Applicant states that, as part of their investment strategies, Harbert and Alpha regularly attempt to identify undervalued securities of financially distressed companies. Both hold publicly traded Senior Notes of NorthWestern issued in 2002. Harbert acquired these securities in the ordinary course of its business on behalf of the managed funds and accounts. Harbert or its administered funds also own beneficially several issuances of NorthWestern's subordinated debt securities. These securities were acquired for investment purposes and continue to be held exclusively for such purposes.

Harbert was active in the reorganization proceedings and engaged in negotiations with NorthWestern, other creditor groups, and other parties to develop the Plan of Reorganization. Applicant states that the Plan of Reorganization has broad support. A hearing on confirmation was held on August 25, 2004 and concluded on October 6, 2004. The requested effective date is no later than November 1, 2004.

Under the Plan of Reorganization, the funds and accounts managed by Harbert expect to receive, in the aggregate, up to a maximum of approximately 26.5% of the common stock of reorganized NorthWestern, if Harbert and affiliates were to exercise all available warrants.[2] Applicant states that it is entitled to exemption under section 3(a)(4) because it will be ''temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted.'' Harbert requests an exemption under section 3(a)(4) for a period of up to three years. Harbert plans to reduce its aggregate holdings to less than 10% of NorthWestern's voting securities in a manner that will enable Harbert to maximize its return on the investment over the three-year period.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3169 Filed 11–15–04; 8:45 am]

BILLING CODE 8010–01–P

[1] In re NorthWestern Corp., Case No. 03–12872 (CGC) (Bankr. D. Del.) (filed Sept. 14, 2003).

[2] Under the Plan of Reorganization, this percentage could be affected if certain unsecured creditors elect not to receive distributions of common stock of reorganized NorthWestern. This event would increase the percentage of the common stock distributed to the remaining unsecured creditors, including the Harbert funds and accounts.

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver of the Nonmanufacturer Rule for Other Communications Equipment Manufacturing.

SUMMARY: The U. S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Other Communications Equipment Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or awarded through the SBA's 8(a) Business Development Program.

DATES: This waiver is effective December 1, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, (Act) 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule.

The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on June 29, 2004, to waive the Nonmanufacturer Rule for Other Communications Equipment Manufacturing. In response, on July 28, 2004, SBA published in the Fedral Register a notice of intent to waive the Nonmanufacturer Rule for Other Communications Equipment Manufacturing.

SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In response to this notice, comments were received from interested parties. SBA has determined from these sources that there are no small business manufacturers of this class of products, and is therefore granting the wavier of the Nonmanufacturer Rule for Other Communications Equipment Manufacturing, NAICS 334290.

Authority: 15 U.S.C. 637(a)(17).

Dated: November 9, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–25405 Filed 11–15–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 29, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–04–19513.

Date Filed: October 27 2004.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0507 dated 29 October 2004 Mail Vote 418—Resolution 004a—CTC12/23 Restriction of Applicability of Resolutions Intended effective date: 15 November 2004.

Docket Number: OST–2004–19544.

Date Filed: October 29, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR-SASC0134 dated 2 November 2004 Mail Vote 419—Resolution 010b—Special Passenger Amending Resolution from India to Europe Intended effective date: 16 November 2004.

Andrea M. Jenkins,

Program Manager, Federal Register Liaison.

[FR Doc. 04–25411 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 29, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–19500.

Date Filed: October 26, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 16, 2004.

Description: Application of Air Executive LU.at GmbH requesting a foreign air carrier permit authorizing it to conduct charter foreign air transportation of persons, property, and mail between any point or points in Austria and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes air service to Austria for the purpose of carrying local traffic between Austria and the United States, and other charters between third countries and the United States.

Docket Number: OST–2004–19518.

Date Filed: October 28, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 18, 2004.

Description: Application of Aviation Ventures, Inc. d/b/a Vision Air requesting a certificate of public convenience and necessity to engage in interstate scheduled air transportation of passengers, property, and mail using 19 passenger seat aircraft.

Docket Number: OST–2004–19543.

Date Filed: October 29, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 19, 2004.

Description: Application of Lakeland Air Transport, Inc., requesting a certificate of public convenience and necessity to engage in interstate air transportation of persons, property, and mail operating 5 roundtrip flights between Ft. Lauderdale, FL and Gulfport, MS.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–25410 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on one currently approved public information collection which will be submitted to OMB for renewal.

DATES: Comments must be received on or before (January 18, 2005).

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith D. Street at the above address, on (202) 267–9895, or by e-mail at: *Judy.Street@faa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collection of information. Comments should evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

1. 2120–0570, Certificated Training Centers–Simulator Rule, Part 142. To determine regulatory compliance, there is a need for airmen to maintain records of certain training and recency of experience; there is a need for training centers to maintain records of students' training, employee qualification and training, and training program approvals. Information is used to determine compliance with airman certification and testing to ensure safety. The current estimated annual reporting burden is 6,822 hours.

Issued in Washington, DC, on November 8, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 04–25418 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2004 19552]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 18, 2005.

FOR FURTHER INFORMATION CONTACT: Murray Bloom, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5320; FAX: 202–366–7485; or e-mail: *murray.bloom@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Designation of Vessels as American Great Lakes Vessels.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0521.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: In accordance with Public Law 101–624, the Secretary of Transportation issued requirements for the submission of applications for designation of vessels as American Great Lakes Vessels. Owners who wish to have this designation must certify that their vessel(s) meets certain criteria established in 46 CFR part 380.

Need and Use of the Information: Application is mandated by statute to establish that a vessel meets statutory criteria for obtaining the benefits of eligibility to carry preference cargoes.

Description of Respondents: Shipowners of merchant vessels.

Annual Responses: One response.

Annual Burden: 1.25 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://dms.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. e.d.t. (or e.s.t.), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.* (Authority: 49 CFR 1.66.)

By Order of the Maritime Administrator.

Dated: November 9, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–25343 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Announcement of Project Selections

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects to be funded under Fiscal Year 2004 appropriations for the Over-the-Road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). The OTRB Accessibility Program makes funds

available to private operators of over-the-road buses to help finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility rule, published in the **Federal Register** on September 24, 1998.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific issues; or Blenda Younger, Office of Program Management, (202) 366–2053, for general information about the OTRB Program.

SUPPLEMENTARY INFORMATION: A total of $6.9 million was made available for the program in FY 2004: $5.2 million for intercity fixed-route providers and $1.7 million for all other providers, such as commuter, charter, and tour operators. A total of 96 applicants requested $23.9 million: $11.2 million was requested by intercity fixed-route providers, and $12.7 million was requested by all other providers. Project selections were made on a discretionary basis, based on each applicant's responsiveness to statutory project selection criteria, fleet size, and level of funding received in previous years. Because of the high demand for the funds available, most applicants received less funding than they requested, but almost all qualified applicants received some funding. The selected projects will provide funding for the incremental cost of adding lifts to 79 new vehicles, retrofitting 110 vehicles, and $172,839 for training. Each of the following 74 awardees, as well as the 22 applicants who were not selected for funding, will receive a letter that explains how funding decisions were made.

AWARD AMOUNT

Operator	City/state	Intercity fixed-route	Other	Total
Region I				
Bonanza Bus Lines	Providence, RI	$104,784		$104,784
Bristol Tours, Inc.	Bristol, VT		$30,659	30,659
Cavalier Coach Corp.	Boston, MA		36,000	36,000
Concord Coach Lines, Inc.	Concord, NH	49,800		49,800
Dartmouth Transportation Co. Inc	Concord, NH		22,400	22,400
Lamoille Valley Transportation	Morrisville, VT		25,192	25,192
Peter Pan Bus Lines	Springfield, MA	264,650		264,650
Premier Coach Company, Inc	Colchester, VT		30,240	30,240
Vermont Transit Co.	Burlington, VT	132,606		132,606
VIP Tour and Charter Bus Co	Portland, ME		40,492	40,492
Region II				
Adirondack Trailways	Hurley, NY	290,500		290,500
Allen AME Transportation Corp	Jamaica, NY		71,000	71,000
Blue Bird Coach Lines	N. Tonawanda, NY		45,000	45,000
Brown Coach Inc.	Amsterdam, NY		35,429	35,429
Coach USA/Cape Transit	Pleasantville, NJ		39,150	39,150
Hampton Jitney, Inc.	Southampton, NY	31,827		31,827
Paradise Travel, Inc.	W. Hempstead, NY		40,000	40,000
Private One of New York, LLC	Brooklyn, NY		22,500	22,500
Shortline (Hudson Transit)	Mahwah, NJ	150,039		150,039
Stout's Charter Service, Inc.	Trenton, NJ		25,650	25,650
Suburban Trails, Inc.	New Brunswick, NJ		22,500	22,500
Syracuse and Oswego Motor Lines	E. Syracuse, NY		40,500	40,500
Trans Express, Inc.	Brooklyn, NY		59,420	59,420
Trolley Tours, Inc.	Forked River, NJ		22,950	22,950
Utica Rome Bus Company	Clinton, NY		40,500	40,500
Region III				
Abbott Bus Lines, Inc.	Roanoke, VA		39,600	39,600
Bieber Tourways	Kutztown, PA	113,000		113,000
Butler Motor Transit	Butler, PA		45,000	45,000
Elegance Bus Tours, Inc.	Suitland, MD		27,000	27,000
Eyre Bus Service, Inc.	Glenelg, MD		26,105	26,105
Lenzer Tour and Travel	Sewickley, PA		45,000	45,000
Martz Trailways	Wilkes-Barre, PA	148,000		148,000
Morgan & Sons Week-End Tours	Greensboro, NC		33,300	33,300
Scenic America, Inc.	Broad Run, VA		39,600	39,600
Sun Coach Lines, LLC.	McKeesport, PA		28,000	28,000
Trans-Bridge Lines	Bethlehem, PA	90,000		90,000
Wilson's Luxury Tours, Inc.	District Hgts., MD		39,600	39,600
Region IV				
Americoach Tours	Memphis, TN		38,250	38,250
Angelic Tours and Shuttles	Fayetteville, NC		40,000	40,000
Carolina Trailways	Raleigh, NC	198,909		198,909
Lancaster Tours Inc.	Lancaster, SC		40,000	40,000

AWARD AMOUNT—Continued

Operator	City/state	Intercity fixed-route	Other	Total
Region V				
Colonial Coach Lines	Mt. Prospect, IL		27,000	27,000
Croswell Bus Lines Inc.	Williamsburg, OH		24,416	24,416
Jefferson Lines	Minneapolis, MN		50,400	50,400
Lakefront Lines Inc.	Brook Park, OH	27,900		27,900
Lamers Bus Lines Inc.	Green Bay, WI	47,000		47,000
Pioneer Coach Lines, Inc.	Chicago, IL		27,000	27,000
Ready Bus Line	La Crescent, MN		25,200	25,200
Riteway Bus Service, Inc.	Richfield, WI		29,250	29,250
Robinson Coach	Evanston, IL		28,875	28,875
Seniors Unlimited Inc.	Pontiac, MI		26,550	26,550
Van Galder Bus Company	Janesville, WI	95,000		95,000
Wisconsin Coach	Waukesha, WI	74,250		74,250
Region VI				
Central Texas Trails Inc.	Waco, TX		12,600	12,600
El Expresso	Houston, TX	78,000		78,000
Franklin Motorcoach Charters	Sapulpa, OK		39,600	39,600
Greyhound	Dallas, TX	2,609,512		2,609,512
Gulf Coast Transit	Houston, TX		36,000	36,000
Hotard Motor Coach Services	New Orleans, LA		36,000	36,000
Kerrville Bus Co.	San Antonio, TX	87,800		87,800
San Antonio City Tours	San Antonio, TX		36,000	36,000
Si Texas Tours	Bandera, TX		44,345	44,345
TNM&O	Lubbock, TX	99,453		99,453
Valley Transit	Harlingen, TX	99,453		99,453
Region VII				
Burlington Trailways	W. Burlington, IA	89,283		89,283
Region VIII				
No Applications				
Region IX				
All Aboard America	Mesa, AZ		20,715	20,715
Antelope Valley Bus	Long Beach, CA	180,540		180,540
Arrow Stage Lines	Phoenix, AZ		35,955	35,955
K–T Contract Services	Las Vegas, NV	71,910		71,910
Pacific Coast Sightseeing Tours	Anaheim, CA		39,780	39,780
Ryan's Express	Las Vegas, NV		23,337	23,337
Showtime Tours	Las Vegas, NV		35,910	35,910
Region X				
Northwestern Stage Lines	Spokane, WA	40,050		40,050
Wickkiser International Co.	Ferndale, WA	44,759		44,759
Total		5,219,025	1,689,970	6,908,995

Eligible project costs may be incurred by awardees prior to final grant approval. The incremental capital cost for adding wheelchair lift equipment to any new vehicles delivered on or after June 9, 1998, the effective date of TEA–21, is eligible for funding under the OTRB Accessibility Program.

Applicants selected for funding may be contacted by FTA regional offices if additional information is needed before grants are made. The grant applications will be sent to the U.S. Department of Labor (DOL) for certification under labor protection requirements pursuant to 49 U.S.C. 5333(b). After referring applications to affected employees represented by a labor organization, DOL will issue a certification to FTA. Terms and conditions of the certification will be incorporated in the FTA grant agreement under the new guidelines replacing those in 29 CFR part 215. Please see *Amendment to Section 5333(b), Guidelines To Carry Out New Programs Authorized by the Transportation Equity Act for the 21st Century (TEA–21);* Final Rule (64 FR 40990, July 28, 1999).

Issued on: November 9, 2004.

Jennifer L. Dorn,

Administrator.

[FR Doc. 04–25419 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–11041, Notice 3]

Toyota Motor North America Denial of Appeal of Decision on Inconsequential Noncompliance

Toyota Motor North America (Toyota), on behalf of Toyota Motor Corporation, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied its application for a determination that the noncompliance of certain Toyota vehicles with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' be deemed inconsequential to motor vehicle safety. Toyota has requested to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety.'' Notice of receipt of the original petition was published in the **Federal Register** on January 9, 2002, (67 FR 1270). On April 15, 2004, NHTSA published a notice in the **Federal Register** denying Toyota's petition (69 FR 20112), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Toyota submitted an appeal of the agency's decision on May 4, 2004.

Toyota manufactured 92,794 MY 2000–2001 Celicas between May 7, 1999 and June 18, 2001 with daytime running lamps (DRLs) that do not meet the FMVSS No. 108 minimum spacing requirements for turn signals. FMVSS No. 108 requires that unless the maximum luminous intensity of the DRL is not more than 2,600 candela (cd) at any location in the beam, the optical center of the turn signal must be at least 100 millimeters (mm) from the lighted edge of the DRL. According to Toyota, the peak intensity of the Celica DRLs is 5,880 cd and the distance between the optical center of the turn signal and the lighted edge of the DRL is 45.6 mm.

To support its original petition, Toyota cited many factors, including that the lighted area of its turn signals is twice the minimum required by FMVSS No. 108, the luminous intensity of the turn signals is 2.8 times the minimum requirement, and an alternative measuring method which would result in 82 mm spacing instead of 45.6 mm. Toyota also conducted an evaluation utilizing contractors which showed that the average subjective rating for the original Celica lamp was greater than the rating for a modified Celica lamp with the required minimum 100 mm spacing, a DRL intensity near the maximum, and a turn signal lamp with the minimum intensity allowed by the regulation. The agency previously considered these factors and noted its reluctance to be persuaded particularly when a noncompliance is so far from specified required levels. Additionally, the agency noted that the reason for specifying a spacing relationship is to lessen the likelihood of motor vehicle crashes, deaths, and injuries by ensuring visibility of a vehicle's turn signal lamps in daylight operation.

In its appeal of the agency's decision, Toyota cited several supporting factors from its original petition and discussed their similarities with a General Motors (GM) petition which the agency granted in 1999 (64 FR 28864). Also, Toyota referenced a NHTSA sponsored research report titled ''Daytime Running Lights and Turn Signal Masking'' [DOT HS 808 221]. Specifically, Toyota indicated that:

> The NHTSA sponsored report concluded that equivalent detection was found between turn signals separated from DRLs by only 50 mm with that of turn signals separated from DRLs by the regulatory minimum of 100 mm, if the intensity of the turn signal located at 50 mm from the DRL was increased to 3 times that of the turn signal that is 100 mm away from the DRL. Toyota believes that although the intensity of its turn signals are 2.8 times the minimum intensity (vs. 3 times in the research) and the separation distance is 45.6 mm (vs. 50 mm in the research), the NHTSA research supports its petition.
>
> The NHTSA sponsored research report found that turn signals larger than the minimum specified area (22 cm^2) are less likely to be masked by DRL light output than smaller, compliant turn signals [with the minimum specified area]. The lighted area of Toyota's turn signals is 45.1 cm^2. Toyota performed a field evaluation similar to one done by GM and reported to NHTSA, because of a similar noncompliance regarding a GM DRL spacing problem. Toyota emphasized that NHTSA, in granting GM's petition, cited as a factor, the larger size of the GM turn signals compared to the minimum required size.

The agency has reviewed Toyota's additional arguments as well as the research report cited and the **Federal Register** notice granting the referenced GM petition. There are many differences between the Toyota lamps, the lamps studied in the referenced NHTSA research report, and the GM lamps for which the agency determined the noncompliance to be inconsequential. The GM lamps had values for several parameters that fell within the range studied in the NHTSA research; however, this is not the case for the Toyota lamps in question. The agency notes the following differences:

While the area of Toyota's turn signals (45.1 cm^2) is slightly more than double the minimum area requirement of 22 cm^2, it is significantly less than the 116 cm^2 area of the referenced GM lamps and the 161 cm^2 area of the subject lamps used in the agency's 1994 research report. Toyota incorrectly stated in its appeal that the agency found the larger size of the GM turn signal was an independent reason why the noncompliance was inconsequential. The agency considered and based its inconsequentiality decision on a combination of factors presented by GM. Simply having a turn signal greater in size than the regulatory minimum required was not the sole basis for granting the petition.

The agency's 1994 research report [DOT HS 808 221] found that spatial relations between the turn signal lamp and the DRL had a significant effect on the results; specifically, the condition of abutting lamps was the worst case scenario for masking of the turn signal. Based on this report, Toyota's abutting lamp configuration with a 45.6 mm separation would be considered a worse case for masking compared to the 71 mm separation cited in GM's petition involving a diagonal configuration less severe for masking. Furthermore, in support of its petition, GM measured the photometric output of its turn signals with DRLs activated and compared the results to the photometric output of the turn signals with a portion of the DRLs blocked to simulate the required minimum 100 mm separation. GM utilized a video based photometer and determined the worst case difference in photometric results for a single zone was a 17.5% difference while the average difference in turn signal zonal photometric output was 12.7%. While the agency gave positive consideration to these factors in granting the GM petition, we are unable to do so in this case due to the lamp configuration utilized by Toyota and the absence of any analysis to determine the loss in turn signal photometric output (measured in photometric zone performance) associated with the worst case masking condition of the Toyota Celica lamps. Based on the Toyota Celica lamp configuration, we expect that the level of masking would be appreciably greater than that of the GM lamps involved in the referenced petition.

In summary, when the agency considered GM's petition it found that the available information supported GM's contention that the level of masking was inconsequential to motor vehicle safety. While many factors were involved, all parameters related to the GM lamps were within the ranges specified in the available research

reports. However, the agency is not aware of any turn signal masking research involving lamps smaller than 75 cm². The Toyota Celica turn signal lamps are slightly greater than half that size. Research was performed by the Society of Automotive Engineers in 1978 and 1993; however, neither of these studies involved turn signal areas less than 75 cm². Furthermore, the research report cited by Toyota to support its petition indicates that the lamp configuration on the Toyota Celica increases masking, which is not the case with the GM lamp configuration. Toyota also failed to quantify the level of masking present through analysis of turn signal photometric data as GM did in supporting its petition.

FMVSS No. 108 currently permits DRLs to be deactivated when turn signal lamps are activated, in order to eliminate the effects of masking turn signals where the minimum 100 mm spacing requirement is not met. Additionally, the agency notes that Toyota issued a Technical Service Bulletin (EL011–00) on October 6, 2000 that addressed how to disable DRLs on the Celica for customers that made this request. This procedure does not appear to be complex.

In consideration of the foregoing, NHTSA has decided that the applicant has not met the burden of persuasion regarding the noncompliance described in its appeal, and the non-compliance is consequential to motor vehicle safety. Accordingly, Toyota's application is hereby denied and it must proceed to notify and remedy as required by statute, at no cost to the consumer.

Authority: (49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: November 8, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–25424 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19547]

Notice of Receipt of Petition for Decision That Nonconforming 2003–2004 BMW X5 Multipurpose Passenger Vehicles, Manufactured From January 1, 2003, Through December 31, 2004, Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003–2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003, through December 31, 2004, are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003–2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003, through December 31, 2004, that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards, are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 16, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. (''AMC''), of North Miami, Florida (Registered Importer 01–278) has petitioned NHTSA to decide whether nonconforming 2003–2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2003–2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003–2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2003–2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003–2004 BMW X5 multipurpose passenger vehicles manufactured from January 1, 2003 through December 31, 2004, are identical to their U.S-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and*

Washing Systems, 106 *Brake Hoses,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Installation of a U.S.-model instrument cluster.

Standard No. 108 Lamps, *Reflective Devices and Associated Equipment:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model headlamps, taillamps, and front and rear side marker lamps that incorporate side reflex reflectors.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Reprogramming and rewiring the vehicle's systems, as required, to ensure compliance with the standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Reprogramming the vehicle computer to the U.S.-mode to ensure compliance with the standard.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Inspection of all vehicles and replacement of any non U.S.-model seat belts, air bag control units, air bags, sensors, and knee bolsters with U.S.-model components on vehicles that are not already so equipped, and (b) reprogramming the vehicle computer to the U.S.-mode to ensure compliance with the standard.

The petitioner states that the occupant restraints used in these vehicles consist of dual front airbags and combination lap and shoulder belts at the front and rear outboard seating positions. These manual systems are automatic, self-tensioning, and are released by means of a single red push-button.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of non-U.S. model seat belt assemblies with U.S.-model components.

Standard No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and replacement of any non-U.S.-model seat belt anchorages with U.S.-model components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and installation of U.S.-model components, on vehicles that are not already so equipped, to ensure compliance with the standard.

The petitioner also states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard at 49 CFR Part 541 and that U.S.-model antitheft components will be installed, if necessary, to achieve compliance with that standard.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–25420 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19549]

Notice of Receipt of Petition for Decision That Nonconforming 2001 Chevrolet Blazer Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 Chevrolet Blazer multipurpose passenger vehicles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 Chevrolet Blazer multipurpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 16, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety

standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL) of Houston, TX (Registered Importer 90–005) has petitioned NHTSA to decide whether nonconforming 2001 Chevrolet Blazer multipurpose passenger vehicles are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 2001 Chevrolet Blazer multipurpose passenger vehicles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001 Chevrolet Blazer multipurpose passenger vehicles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with all applicable Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2001 Chevrolet Blazer multipurpose passenger vehicles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 Chevrolet Blazer multipurpose passenger vehicles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic and Electric Brake Systems,* 106 *Brake Hoses,* 111 *Rearview Mirrors,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars,* 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model headlamp assemblies that incorporate front side marker lamps.

Standard No. 225 *Child Restraint Anchorage Systems:* Inspection of all vehicles manufactured on or after 9–1–2000, and installation of U.S.-model child seat tether anchorages if the vehicle is not already so equipped.

The petitioner also states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard at 49 CFR Part 541, and that antitheft devices will be installed, if necessary, to comply with that standard.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–25421 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19548]

Notice of Receipt of Petition for Decision That Nonconforming 1998 Lexus GS300 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1998 Lexus GS300 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998 Lexus GS300 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 16, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.] Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Sunshine Car Import (''SCI'') of Ft. Myers, Florida, (Registered Importer 01–289) has petitioned NHTSA to decide whether nonconforming 1998 Lexus GS300 passenger cars are eligible for importation into the United States. The vehicles which SCI believes are substantially similar are 1998 Lexus GS300 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998 Lexus GS300 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SCI submitted information with its petition intended to demonstrate that non-U.S. certified 1998 Lexus GS300 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998 Lexus GS300 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems,* 105, *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol, and (b) replacement or conversion of the speedometer to read in miles per hours.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Inspection of all vehicles and replacement of any non-U.S. model components required to meet the requirements of this standard with U.S.-model components.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection*: Installation of a supplemental key warning buzzer system to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems*: Inspection of all vehicles and installation, on vehicles that do not already meet the requirements of the standard, of a supplemental relay system to meet the requirements of the standard.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of U.S. version software to ensure that the seat belt warning system meets the requirements of this standard, (b) installation of U.S.-model driver's side airbag and front seat belts, and (C) inspection of all vehicles and replacement of any non-U.S.-model components necessary for conformity with this standard with U.S.-model components.

Petitioner states that the restraint systems used in the vehicles include airbags and knee bolsters at the front outboard seating positions as well as combination lap and shoulder belts at the front and rear designated seating positions. These seat belt systems are self-tensioning and release by means of a single red pushbutton.

Standard No. 214 *Side Impact Protection*: Inspection of all vehicles and replacement of any non-U.S.-model components necessary for conformity with this standard with U.S.-model components.

The petitioner also states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard at 49 CFR part 541, and that vehicles will be modified, if necessary, to comply with that standard.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.] It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–25426 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17939; Notice 2]

Bentley Motors, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Bentley Motors, Inc. (Bentley) has determined that certain vehicles that it manufactured in 2004 do not comply with S4.2.2(a) of 49 CFR 571.114, Federal Motor Vehicle Safety Standard (FMVSS) No. 114, ''Theft protection.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bentley has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on June 1, 2004, in the **Federal Register** (69 FR 30990). NHTSA received no comments.

Approximately 464 model year 2004 Bentley Continental GT vehicles are affected. S4.2.2(a) of FMVSS No. 114 requires that

> * * * provided that steering is prevented upon the key's removal, each vehicle * * * [which has an automatic transmission with a ''park'' position] may permit key removal when electrical failure of this [key-locking] system * * * occurs or may have a device which, when activated, permits key removal.

In the affected vehicles, the steering does not lock when the ignition key is removed from the ignition switch using the optionally provided device that permits key removal in the event of electrical system failure or when the transmission is not in the ''park'' position.

Bentley believes the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Bentley explained:

> In the Bentley Continental GT, for which this petition is submitted, the ability to remove the ignition key using the key removal device is a primary security and safety feature (to the extent that it prevents the vehicle from being driven) because the vehicle is equipped with an electronic immobilizer which prevents starting of the engine unless the electronically coded ignition key provided for that vehicle is used in the electronic steering column/ignition switch. The ''code'' to start the engine and activate the fuel and ignition system is embedded in the engine control module and therefore cannot be bypassed or defeated. If the ignition key cannot be removed in the event of vehicle power failure, the driver will not be able to lock the vehicle and the car may be capable of being started and driven by anyone who can repair it (which may be as simple as use of an external electrical supply/battery), because the electronically coded ignition key remains in the steering column/ignition switch.

Bentley explained that when there is no vehicle power failure and the override device is used to remove the key when the transmission is not in ''park,'' there is no risk to motor vehicle safety because this would occur only in a repair shop or under supervised conditions when the vehicle must be moved but it is desired to remove the key for security reasons. Bentley stated that in this case, the electronic immobilizer provides anti-theft protection and the steering lock is not significant.

The agency agrees with Bentley. The owner's manuals for these vehicles state as follows:

> There is a chip in the [ignition] key. It automatically deactivates the immobilizer when the key is inserted into the ignition lock. The electronic immobilizer is automatically activated when you take the key out of the ignition lock.

NHTSA issued an interpretation letter to an unnamed person on September 24, 2004, which stated in pertinent part as follows:

> The engine control module immobilizer described in your letter satisfies the requirements of S4.2(b) because it locks out the engine control module if an attempt is made to start the vehicle without the correct key or to bypass the electronic ignition system. When the engine control module is locked, the vehicle is not capable of forward self-mobility because it is incapable of moving forward under its own power.

Theft protection of vehicles is addressed under S4.2 of the standard. Section 4.2(b) can be met by preventing either steering or forward self-mobility. Therefore, an equivalent level of theft protection is provided by ''either steering or forward self-mobility.''

NHTSA amended FMVSS No. 114 in 1990 to require that vehicles with an automatic transmission and a ''park'' position be shifted to ''park'' or become locked in park before the key can be removed to reduce incidents of vehicle rollaway. S4.2.2(a) was added in 1991 to permit key removal when an electrical failure occurred and the transmission could not be manually shifted into park, provided that steering was prevented for theft protection.

The forward self-mobility feature does not prevent vehicle rollaway by itself. However, the parking brake used in combination with the forward self-mobility feature will prevent rollaway. The owner's manuals for these vehicles include the following information:

> The parking brake can be used to prevent the vehicle from moving unintentionally. Always apply the parking brake when you leave your vehicle and when you park.

If an electrical failure occurs when the transmission is not in park, the driver may be able to remove the ignition key using the information in the owner's manual, but will more likely contact the manufacturer's hotline or dealer for assistance. Bentley is instructing its hotline staff and advising its dealers via a service bulletin to ask the caller to ensure that the parking brake is firmly applied before attempting to remove the key.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Bentley's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: November 10, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–25423 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–17902; Notice 2]

Volkswagen of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (Volkswagen) has determined that certain vehicles that were produced by Volkswagen AG and AUDI AG in 2004 do not comply with S4.2.2(a) of 49 CFR 571.114, Federal Motor Vehicle Safety Standard (FMVSS) No. 114, ''Theft protection.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR

part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on May 28, 2004, in the **Federal Register** (69 FR 30745). NHTSA received no comments.

Approximately 47,962 model year 2004 vehicles are affected including approximately 37,663 Touareg, approximately 2,268 Phaeton and approximately 8,031 Audi A8L vehicles. S4.2.2(a) of FMVSS No. 114 requires that

> * * * provided that steering is prevented upon the key's removal, each vehicle * * * [which has an automatic transmission with a ''park'' position] may permit key removal when electrical failure of this [key-locking] system * * * occurs or may have a device which, when activated, permits key removal.

In the affected vehicles, the steering does not lock when the key is removed using the override system provided to permit key removal when the transmission is not in the ''park'' position.

Volkswagen believes the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Volkswagen explained:

> In the Volkswagen and Audi car lines for which this petition is submitted, the ability to remove the key with the override system is the priority security and safety feature (to the extent that it prevents a stolen vehicle from being driven) because the vehicles are equipped with an electronic immobilizer which prevents starting of the vehicle unless the electronically coded key provided for that vehicle is used. The code to start the engine and activate the fuel and ignition system is embedded in the engine control module and therefore cannot be bypassed or defeated. If the key cannot be removed in the event of vehicle power failure, the owner will not be able to lock the vehicle and the car can be started and driven by anyone who can get it repaired, which is as simple as a jump start.

Volkswagen explained that when there is no vehicle power failure and the override device is used to remove the key when the transmission is not in ''park,'' there is no risk to motor vehicle safety because this would occur only in a repair shop or under supervised conditions when the vehicle must be moved but it is desired to remove the key for security reasons. Volkswagen stated that in this case, the electronic immobilizer provides anti-theft protection and the steering lock is not significant.

The agency agrees with Volkswagen. The owner's manuals for these vehicles state as follows:

> There is a chip in the [ignition] key. It automatically deactivates the immobilizer when the key is inserted into the ignition lock. The electronic immobilizer is automatically activated when you take the key out of the ignition lock.

NHTSA issued an interpretation letter to an unnamed person on September 24, 2004, which stated in pertinent part as follows:

> The engine control module immobilizer described in your letter satisfies the requirements of S4.2(b) because it locks out the engine control module if an attempt is made to start the vehicle without the correct key or to bypass the electronic ignition system. When the engine control module is locked, the vehicle is not capable of forward self-mobility because it is incapable of moving forward under its own power.

Theft protection of vehicles is addressed under S4.2 of the standard. Section 4.2(b) can be met by preventing either steering or forward self-mobility. Therefore, an equivalent level of theft protection is provided by ''either steering or forward self-mobility.''

NHTSA amended FMVSS No. 114 in 1990 to require that vehicles with an automatic transmission and a ''park'' position be shifted to ''park'' or become locked in park before the key can be removed to reduce incidents of vehicle rollaway. S4.2.2(a) was added in 1991 to permit key removal when an electrical failure occurred and the transmission could not be manually shifted into park, provided that steering was prevented for theft protection.

The forward self-mobility feature does not prevent vehicle rollaway by itself. However, the parking brake used in combination with the forward self-mobility feature will prevent rollaway. The owner's manuals for these vehicles include the following information:

> The parking brake can be used to prevent the vehicle from moving unintentionally. Always apply the parking brake when you leave your vehicle and when you park.

If an electrical failure occurs when the transmission is not in park, the driver may be able to remove the ignition key using the information in the owner's manual, but will more likely contact the manufacturer's hotline or dealer for assistance. Volkswagen is instructing its hotline staff and advising its dealers via a service bulletin to ask the caller to ensure that the parking brake is firmly applied before attempting to remove the key.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: November 10, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–25422 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–04–18607; Notice 2]

Pipeline Safety: Grant of Waiver; Alyeska Pipeline Service Company

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; grant of waiver.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) is granting Alyeska Pipeline Service Company's (Alyeska) petition for a waiver of the pipeline safety regulation that requires an operator to reduce the pressure of a pipeline to not more than 50 percent of the maximum operating pressure whenever the line pipe is moved.

SUPPLEMENTARY INFORMATION:

Background

Alyeska petitioned RSPA/OPS for a waiver from compliance with the requirements of 49 CFR 195.424(a) for 420 miles of aboveground line pipe in the Trans Alaska Pipeline System (TAPS). TAPS was designed and constructed between 1973 and 1977 to transport oil 800 miles from Prudhoe Bay, Alaska, to Alyeska's marine terminal at Valdez, Alaska. Over half of the TAPS pipeline was constructed aboveground. Section 195.424(a) does not allow a pipeline operator to move any line pipe unless the pressure in the pipeline section is reduced to not more than 50 percent of the maximum operating pressure (MOP). Alyeska argues that lowering the pressure on the aboveground portion of TAPS is not necessary and is disruptive and burdensome to its pipeline operations.

The requested waiver would apply whenever routine maintenance necessitates that the aboveground line pipe be moved laterally, longitudinally or vertically, to relieve pipe stresses and restore the pipe to its intended position. On July 22, 2004, RSPA/OPS published a notice in the **Federal Register** requesting public comment on Alyeska's waiver request (69 FR 43880). No

comments were received in response to this Notice.

Findings and Grant of Waiver

RSPA/OPS finds that Alyeska's requested waiver from § 195.424 (a) is not inconsistent with pipeline safety for the following reasons:

1. Because of its unique design, the aboveground portion of TAPS behaves differently from conventionally buried pipelines. Moving a buried pipeline during maintenance activities may impose additional stresses on the pipe. Thus, lowering the pipeline pressure prior to movement provides a safety factor and reduces the possibility of pipeline failure from overstressing the pipe. In contrast, TAPS' aboveground pipeline is placed on support structures that allow the pipeline to move freely within a design range without imposing additional stresses on the pipeline. This design feature eliminates or reduces stresses imposed on the pipeline due to thermal expansion, seismic events, or settlement of the support structures and reduces the need to reduce pressure on the pipeline.

2. The TAPS pipeline is fully restrained where it transitions between underground and aboveground sections. The point of restraint is located approximately 1,000–1,500 feet away from the transition. This is point where the pipeline begins to behave as a fully restrained underground structure. Aboveground piping is more easily monitored and is much less restrained than underground pipe. Stresses imposed on aboveground pipe in the TAPS system are resolved by allowing movement of the pipe on support structures. Therefore, it is not necessary to reduce operating pressure on aboveground sections of the TAPS pipeline during routine maintenance activities.

3. Alyeska has established maintenance procedures to ensure the safety of the aboveground portion of this pipeline. These maintenance procedures ensure that the pipeline is maintained within its safe operating design limits. Alyeska has procedures to:

- Install temporary support brackets to lift and replace the pipeline's vertical support members (VSMs);
- Calibrate the spring hangers and balance the load across the VSM;
- Adjust the brackets and re-level the anchor platforms whenever the anchor platform exceeds 2 percent;
- Reposition the anchor slide plate to return the anchor to its proper alignment; and
- Adjust the elevation of the pipe shoes to increase the flexibility of the pipeline during pipe movement.

Many of these maintenance procedures are considered ''covered tasks'' under 49 CFR 195.501, *Qualification of Pipeline Personnel.* All steps of a procedure are mandatory and must be followed by pipeline maintenance personnel. Maintenance crew members must be qualified on the method of applying a procedure and on how to provide notification to the Operations Control Center, the local Maintenance Coordinator, the Control Room Operator, and the nearest upstream pump station prior to performing a procedure.

Based on these findings, RSPA/OPS grants Alyeska's request for a waiver of the requirements of § 195.424(a) for the aboveground portion of TAPS. The grant of this waiver is conditioned on the following items. Alyeska must—

- Apply this waiver only to the aboveground portions of TAPS;
- Apply this waiver during instances of routine pipe movement provided the pipe movement does not increase the stresses on the pipe;
- Not apply this waiver during instances where the pipe has fallen off the pipe supports due to seismic or hydraulic events, frost jacking, or dilapidated support structures; and
- Apply this waiver only during instances whenever routine maintenance necessitates the aboveground pipe be moved laterally, longitudinally or vertically, to relieve pipe stresses and restore the pipe to its intended position.

If Alyeska does not comply with any of these requirements, or if circumstances indicate that the waiver compromises the safety of the pipeline or of people or property, RSPA/OPS reserves the right to terminate the waiver.

Authority: 49 U.S.C. 60118(c) and 49 CFR 1.53.

Issued in Washington, DC on November 10, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–25427 Filed 11–15–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 9460 and 9477

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 9460 and 9477, Tax Forms Inventory Report.

DATES: Written comments should be received on or before January 18, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax Forms Inventory Report.

OMB Number: 1545–1739.

Forms Numbers: 9460 and 9477.

Abstract: Forms 9460 and 9477 are designed to collect tax forms inventory information from banks, post offices, and libraries that distribute federal tax forms. Data is collected detailing the quantities and types of tax forms remaining at the end of the filing season. The data is combined with the shipment date for each account and used to establish forms distribution guidelines for the following year. Form 9460 is used for accounts who order forms in carton quantities, and Form 9477 is used for those who order forms in less than carton quantities.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Respondents: 14,000.

Estimated Time Per Respondent: 14 minutes.

Estimated Total Annual Burden Hours: 3,417.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 8, 2004.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 04–25326 Filed 11–15–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 220

Tuesday, November 16, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Program Year (PY) 2005 Workforce Information Core Products and Services Grants Planning Guidance

Correction

In notice document E4–3078 beginning on page 64977 in the issue of Tuesday, November 9, 2004, make the following correction:

On page 64978, in the first column, under the heading ''**DATES**'', in the second line, ''January 10, 2004'' should read ''January 10, 2005''.

[FR Doc. Z4–3078 Filed 11–15–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17616; Airspace Docket No. 04–ASO–6]

Amendment of Class E Airspace; Dayton, TN

Correction

In rule document 04–15554 beginning on page 41189 in the issue of Thursday, July 8, 2004, make the following corrections:

§ 71.1 [Corrected]

1. On page 41190, in the second column, in §71.1, under the heading **ASO TN E5 Dayton, TN [Revised]**, in the fourth line, ''(lat. 35°13''12' N, long. 84°55''57' W)'' should read ''(lat. 35°13'12'' N, long. 84°49'57'' W).''

2. On the same page, in the same column, in the same section, under the heading **Bradley Memorial Hospital, Cleveland, TN**, in the 12th line, ''(lat. 35°''34' N, long.'' should read ''(lat. 35°37'34'' N, long.''

[FR Doc. C4–15554 Filed 11–15–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
November 16, 2004

Part II

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Coastal and Great Lakes Recreation Waters; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW–2004–0010; FRL–7837–5]

RIN 2040–AE63

Water Quality Standards for Coastal and Great Lakes Recreation Waters

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating water quality criteria for bacteria for coastal recreation waters in specific States and Territories. The States and Territories covered by this promulgation do not have water quality standards for bacteria that comply with the requirements of section 303(i)(1)(A) of the Clean Water Act. Under these circumstances, the Act requires EPA to promptly propose such standards and to promulgate such standards not later than 90 days after proposal. The criteria promulgated today apply to coastal and Great Lakes waters that specific States and Territories have designated for swimming, bathing, surfing, or similar water contact activities and for which the State or Territory does not have in place EPA-approved bacteria criteria that are as protective of human health as EPA's 1986 recommended bacteria criteria. Through this promulgation, the Federally designated water quality criteria will be added to the States' and Territories' water quality criteria applicable to coastal recreation waters.

DATES: This final rule is effective December 16, 2004.

ADDRESSES: EPA has established a docket for this action under DOCKET ID No. OW–2004–0010. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Quality Standards for Coastal and Great Lakes Recreation Waters Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Quality Standards for Coastal and Great Lakes Recreation Water Docket is (202) 566–2422.

FOR FURTHER INFORMATION CONTACT: For information concerning today's rulemaking, contact Lars Wilcut, Standards and Health Protection Division, Office of Science and Technology (4305 T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0447; fax number: (202) 566–0409; e-mail address: *wilcut.lars@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information

A. Does This Action Apply to Me?

State and Territorial agencies responsible for adopting and implementing water quality standards in the States and Territories identified in 40 CFR 131.41 are the entities most directly affected by today's rule. People concerned with water quality in coastal and Great Lakes States may be interested in this rulemaking. Facilities discharging pollutants to certain waters of the United States in coastal and Great Lakes States could be affected by this rulemaking because water quality standards are used in determining water quality-based National Pollutant Discharge Elimination System permit limits. In addition, beach managers and businesses in beach areas could also be indirectly affected by this rulemaking because water quality standards are used in making decisions regarding beach advisories and closures. Categories and entities that may be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to the waters of the States and Territories identified in 40 CFR 131.41.
Municipalities	Publicly-owned treatment works or municipal wet weather discharges (such as combined sewer overflows) that discharge pollutants to the waters of the States and Territories identified in 40 CFR 131.41.
Other	Beach owners and managers, beach goers. States identified in 40 CFR 131.41.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine the language in 40 CFR 131.41 of today's final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2004–0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Quality Standards for Coastal and Great Lakes Recreation Waters Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Quality Standards for Coastal and Great Lakes Recreation Waters Docket is (202) 566–2422. Docket copying costs are as follows: the first 266 pages are free, additional copying incurs a $25 administrative fee, and each additional page is $0.15.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B. Once in the system, select ''search,'' then key in the appropriate docket identification number.

II. Background

A. Statutory and Regulatory Background

1. Clean Water Act

Section 303 (33 U.S.C. 1313) of the Clean Water Act directs States, Territories, and authorized Tribes, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the Clean Water Act. Under section 303, States, Territories, and authorized Tribes are to develop water quality standards for navigable waters of the United States within the State, Territory, or authorized Tribe. Section 303(c) provides that water quality standards shall include the designated use or uses for the waters and water quality criteria necessary to protect those uses. Section 303(c)(2)(A) of the Clean Water Act specifies the uses that States, Territories, and authorized Tribes should consider in establishing new or revised water quality standards. These uses are public water supplies, propagation of fish and wildlife, recreational purposes, agricultural, industrial, and other purposes, and navigation. States, Territories, and authorized Tribes must review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. States, Territories, and authorized Tribes must submit the results of this triennial review to EPA, and EPA must approve or disapprove any new or revised standards.

Section 303(c) of the Clean Water Act authorizes the EPA Administrator to promulgate water quality standards to supersede State, Territorial, or authorized Tribal standards that have been disapproved or in any case where the Administrator determines that a new or revised standard is needed to meet the Clean Water Act's requirements. EPA regulations implementing Clean Water Act section 303(c) are published at 40 CFR Part 131. Under these rules, the minimum elements that States, Territories, or authorized Tribes must incorporate in their water quality standards include: use designations for all water bodies in the State, Territory, or authorized Tribe, water quality criteria sufficient to protect those use designations, and an antidegradation policy (see 40 CFR 131.6). Section 303(c)(4) requires the EPA Administrator to promulgate any new or revised water quality standard not later than 90 days after publishing a proposed Federal standard unless prior to this deadline, the State, Territory or authorized Tribe has adopted a water quality standard that the Administrator determines to be in accordance with the Clean Water Act.

2. The BEACH Act of 2000

The Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 amended the Clean Water Act in part by adding section 303(i). Section 303(i)(1)(A) requires that not later than April 10, 2004, ''each State having coastal recreation waters shall adopt and submit to the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria under section 304(a).'' EPA's *Ambient Water Quality Criteria for Bacteria—1986* (EPA 440/5–84–002, January 1986) (the 1986 bacteria criteria document) is the relevant criteria document published by the Administrator under Clean Water Act section 304(a).

Section 303(i)(2)(A) requires that, ''[i]f a State fails to adopt water quality

criteria and standards in accordance with [section 303(i)(1)(A)] that are as protective of human health as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in [section 303(i)(1)(A)] for coastal recreation waters of the State.''

The BEACH Act also added section 502(21)(A) to the Clean Water Act, which defines ''coastal recreation waters'' as ''(i) the Great Lakes; and (ii) marine coastal waters (including coastal estuaries) that are designated under section 303(c) by a State for use for swimming, bathing, surfing, or similar water contact activities.'' Section 502(21)(B) explicitly excludes from the definition of coastal recreation waters ''inland waters; or * * * waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.''

B. 1986 Ambient Water Quality Criteria for Bacteria

In 1986, EPA published *Ambient Water Quality Criteria for Bacteria—1986.* This document contains EPA's current recommended water quality criteria for bacteria to protect people from gastrointestinal illness in recreational waters, *i.e.*, waters designated for primary contact recreation or similar full body contact uses. States and Territories typically define primary contact recreation to encompass recreational activities that could be expected to result in the ingestion of, or immersion in, water, such as swimming, water skiing, surfing, kayaking, or any other recreational activity where ingestion of, or immersion in, the water is likely. The main route of exposure to illness-causing organisms during recreation in water is through accidental ingestion of fecally contaminated water while engaging in these activities.

EPA based its 1986 water quality criteria for bacteria on levels of indicator bacteria, namely *Escherichia coli* (*E. coli*) and enterococci, which demonstrate the presence of pathogens in fecal pollution that can cause acute gastrointestinal illness. Public health agencies have long used indicator organisms such as these to protect people from illnesses that they may contract from engaging in recreational activities in surface waters contaminated by fecal pollution. These organisms generally do not cause illness directly, but have demonstrated characteristics that make them good indicators of fecal contamination and thus the potential presence of pathogens capable of causing human illnesses such as gastroenteritis. Gastroenteritis describes a variety of diseases that affect the gastrointestinal tract and are rarely life-threatening. Symptoms of the illness include nausea, vomiting, stomachache, diarrhea, headache, and fever. Prior to its publication of the 1986 bacteria criteria document, EPA recommended the use of fecal coliforms as an indicator organism to protect people from gastrointestinal illness in recreational waters. The previously recommended numeric criteria for fecal coliform were a geometric mean of 200/100 ml, with no more than 10% of the total samples taken during any 30-day period exceeding 400/100 ml. However, EPA conducted epidemiological studies and evaluated the use of several organisms as indicators, including fecal coliforms, *E. coli*, and enterococci. EPA subsequently recommended the use of *E. coli* or enterococci for fresh recreational waters and enterococci for marine recreational waters because levels of these organisms more accurately predict acute gastrointestinal illness than levels of fecal coliforms. On page 5, EPA's 1986 bacteria criteria document states: ''[E]nterococci showed the strongest relationship to gastroenteritis. *E. coli* was a very poor second and all of the other indicators, including total coliforms and fecal coliforms showed very weak correlations to gastroenteritis.''

In EPA's epidemiological studies, *E. coli* and enterococci exhibited the strongest correlation to swimming-associated gastroenteritis, the former in freshwaters only and the latter in both fresh and marine waters (1986 bacteria criteria document; *Health Effects Criteria for Fresh Recreational Waters,* EPA 600/1–84–004, August 1984; *Health Effects Criteria for Marine Recreational Waters,* EPA 600/1–80–031, August 1983). In marine waters, the stronger correlation may be due to enterococci's ability to survive longer than coliforms, similar to the pathogens of concern. In addition, fecal coliforms are sometimes detected where fecal contamination is absent, possibly resulting in inaccurate assessments of recreational safety. For example, *Klebsiella* spp., a bacterial organism that is part of the fecal coliform group but which is generally not harmful to humans and does not occur with fecal contamination, is often present in pulp and paper and textile mill effluents (Archibald, F., Water Qual. Res. J. Canada 35(1):1–22, 2000; Dufour, Journal WPCF, 48:872–879, 1976).

Table 1 contains the water quality criteria values for the protection of primary contact recreation that EPA recommended in the 1986 bacteria criteria document. EPA developed these values based on the concentrations of *E. coli* and enterococci from EPA-sponsored epidemiological studies that roughly correlated to the estimated illness rate associated with EPA's previously recommended fecal coliform criteria. EPA estimated this illness rate to be approximately 0.8% of swimmers exposed in freshwater and 1.9% of swimmers exposed in marine waters. EPA's 1986 bacteria criteria document indicates the illness rates are ''only approximate'' and that the Agency based the 1986 values that appear in Table 1 on these approximations. The 1986 bacteria criteria document provides geometric mean densities as well as four different single sample maximum values (representing values below which an increasing percentage of single values are expected to fall if the mean (average) of all samples equals the geometric mean criterion). The higher the single sample maximum, the lower the probability that a single sample exceeding that value would occur as part of the normal random variability of samples around the geometric mean. Single sample maximums are water quality assessment tools that provide a sense of when a single value that comes from a waterbody may be part of a bacterial density with a geometric mean concentration higher than that specified by the water quality criteria. For instance, if the geometric mean concentration in the water at a marine beach is 35/100 ml, then there is an 18% probability that the concentration of enterococci in a single sample would be over 158/100 ml. One could thus consider a single sample with this value to be indicative of bacterial densities with a geometric mean above 35/100 ml, but there would be a non-trivial chance of being wrong in this determination. Statisticians say this conclusion can be drawn ''with 82% confidence.''

The 1986 bacteria criteria document includes, for each geometric mean, a table of four single sample maximum values that are appropriate for different levels of beach usage. In general, where a given area has a greater potential for more people to be exposed, that area may warrant a higher degree of protectiveness (*i.e.*, a lower single sample maximum). The 1986 bacteria criteria document categorizes the levels of beach usage corresponding to the four single sample maximums as follows: ''designated bathing beach'' for the 75%

(most protective) confidence level, ''moderate use for bathing'' for the 82% confidence level, ''light use for bathing'' for the 90% confidence level, and ''infrequent use for bathing'' for the 95% confidence level. Note that the lowest confidence level corresponds to the highest level of protection because it leads to a more precautionary judgment to treat the waterbody as exceeding the mean criterion, even though there is less statistical confidence that this is the case. EPA assigned the lowest single sample maximum to designated bathing beach areas because a high degree of caution should be used to evaluate the status of such areas, giving greater weight to a measured single value above the geometric mean, even though the statistical significance of this single measurement may be weak. EPA believes this is appropriate because more people are likely to become ill at heavily used areas if they exceed the criteria. The 1986 bacteria criteria document described bathing beach areas as those areas that are ''frequently lifeguard protected, provide parking and other public access and are heavily used by the public.'' The document does not specifically describe in greater detail the potential use frequency differences of ''moderate,'' ''lightly used,'' and ''infrequently used'' full body contact recreation waters.

TABLE 1.—1986 CRITERIA FOR INDICATORS FOR BACTERIOLOGICAL DENSITIES

	Acceptable swimming associated gastroenteritis rate per 1000 swimmers	Steady state geometric mean indicator density	Single sample maximum allowable density [4] [5]			
			Designated beach area (upper 75% C.L.)	Moderate full body contact recreation (upper 82% C.L.)	Lightly used full body contact recreation (upper 90% C.L.)	Infrequently used full body contact recreation (upper 95% C.L.)
Freshwater						
Enterococci	8	33/100 ml [1] ...	61	78	107	151
E. coli	8	126/100 ml [2]	235	298	409	575
Marine Water						
Enterococci	19	35/100 ml [3] ...	104	158	276	501

Notes:

[1] Calculated to nearest whole number using equation: (mean enterococci density) = antilog$_{10}$ ((illness rate/1000 people + 6.28)/9.40).

[2] Calculated to nearest whole number using equation: (mean *E. coli* density) = antilog$_{10}$ ((illness rate/1000 people + 11.74)/9.40).

[3] Calculated to nearest whole number using equation: (mean enterococci density) = antilog$_{10}$ ((illness rate/1000 people $-$0.20)/12.17).

[4] Single sample limit = antilog$_{10}$ (log10 indicator geometric mean density/100 ml + (factor determined from areas under the normal probability curve for the assumed level of probability * log10 standard deviation)).

The appropriate factors for the indicated one sided confidence levels are:

75% C.L.–.675
82% C.L.–.935
90% C.L.–1.28
95% C.L.–1.65.

[5] Based on the observed log standard deviations during the EPA studies: 0.4 for freshwater *E. coli* and enterococci; and 0.7 for marine water enterococci. Each jurisdiction may establish its own standard deviation for its conditions which would then vary the single sample limit.

III. EPA's Proposed Rule and Solicitation of Comment

A. July 2004 Proposed Rule

On July 9, 2004, EPA published a proposal entitled ''Water Quality Standards for Coastal and Great Lakes Recreation Waters'' (see 69 FR 41720). At that time, EPA proposed to promulgate *E. coli* and enterococci standards for coastal recreation waters in States that had not adopted water quality standards for those waters that are as protective of human health as EPA's 1986 bacteria criteria.

EPA proposed a geometric mean of 126/100 ml for *E. coli* in fresh coastal recreation waters and a geometric mean of 35/100 ml for enterococci in marine coastal recreation waters. EPA also proposed four different single sample maximums in both fresh and marine coastal recreation waters. Each single sample maximum was assigned to a category of coastal recreation water based on intensity of use. EPA proposed to interpret the single sample maximums as maximum values that would not be allowed to be exceeded, but requested comment on various other interpretations. EPA did not propose particular waters to which a specific single sample maximum would apply; rather, EPA proposed that States and Territories would determine which single sample maximum would apply to each of its coastal recreation waters. The criteria values for fresh and marine coastal recreation waters are the same values that are found in the 1986 bacteria criteria document.

EPA did not include coastal or Great Lakes States and Territories in the proposed rule if their current standards met each of five criteria: the standards are based on EPA's 1986 recommended pathogen indicators; the standards are derived from a scientifically-defensible methodology linked quantitatively to an acceptable risk level under Clean Water Act section 303(i); the standards include appropriate single sample maximums; the standards do not address fecal contamination from non-human sources in a way inconsistent with the 1986 bacteria criteria; and EPA approved the standards. If a State or Territory met all five criteria, EPA proposed to not include that State or Territory in the rule.[1]

B. Public Comments

The comment period for this rule closed on August 9, 2004. EPA received 55 comments on the proposed rule from a variety of sources, including academic associations, environmental groups, municipal wastewater associations, industry, State agencies, local governments, and private citizens. Most of the comments focused on the following issues: choice of pathogen indicator, promulgation of a geometric mean and four single sample maximums for the indicators, use of the single sample maximum, intensity of use categories of coastal recreation waters, intrastate vs. interstate determinations of use intensity, State calculation of site-specific single sample maximums, and addressing non-human sources of bacteria. This preamble includes a general summary of public comments in

[1] In the case of Washington State, EPA has determined that a fecal coliform standard of 14/100 ml for marine waters is ''as protective as'' EPA's 1986 bacteria criteria. (*See* section V.A.1 of this preamble.)

the discussions of the various issues addressed here. EPA has prepared a ''Comment Response Document'' that includes responses to comments submitted on the proposed rule, which is in the docket for today's rule.

IV. Criteria That EPA Is Promulgating Today

A. Scope of the Rule

EPA is promulgating the rule to apply, as proposed, to Great Lakes and marine coastal recreation waters (including coastal estuaries) designated by a State or Territory under Clean Water Act 303(c) for swimming, bathing, surfing, or similar water contact activities. As explained in the preamble to the proposed rule (69 FR 41723), the requirements of the BEACH Act are limited to ''coastal recreation waters,'' which are defined in Clean Water Act section 502(21) as the Great Lakes and marine coastal recreation waters (including coastal estuaries) that are designated under Clean Water Act section 303(c) by a State for use for swimming, bathing, surfing, or similar water contact activities. The definition explicitly excludes ''inland waters or waters upstream of the mouth of a river or stream having an unimpaired natural connection with the open sea.'' EPA interprets Clean Water Act section 502(21) to apply only to those Great Lakes waters that are designated for swimming, bathing, surfing, or similar water contact activities, consistent with the purpose of the BEACH Act to protect the public from the health risks associated with swimming in polluted water.

The BEACH Act clearly envisioned and intended that States, Territories, and authorized Tribes with coastal recreation waters adopt into their water quality standards bacteria criteria as protective of human health as EPA's 1986 bacteria criteria. Under EPA's water quality standards regulations at 40 CFR Part 131, States, Territories, and authorized Tribes have broad discretion to designate specific uses to specific waters. They are not required to designate all waters for swimming, bathing, surfing, or similar water contact activities (*i.e.*, primary contact recreation), as long as they have complied with the requirements of the Clean Water Act and EPA's implementing regulations for designating uses. Today's rule applies only to those waters designated by a State or Territory for swimming, bathing, surfing, or similar water contact activities, not to waters designated for uses that only involve incidental contact. However, States, Territories, and authorized Tribes are to continue to work towards the goal of achieving full attainment of Clean Water Act section 101(a) uses (''fishable/swimmable'') in waters that do not currently attain such uses. Further, any waters with designated uses that do not include the uses specified in Clean Water Act section 101(a)(2) must be re-examined every three years to determine if any new information has become available (40 CFR 131.20(a)). If such new information indicates that the uses specified in Clean Water Act section 101(a)(2) are attainable, the State, Territory, or authorized Tribe is required to revise its water quality standards accordingly. EPA expects States, Territories, and authorized Tribes to continue this process and revise their water quality standards where appropriate. States, Territories, and authorized Tribes may remove a designated use that is not an existing use if it conducts a use attainability analysis to demonstrate that the designated use is not attainable (40 CFR 131.10(g)).

EPA received few comments on the scope of the rule. One commenter suggested that the rule should not apply to State waters outside of the areas where swimming normally occurs, citing as an example Hawaii's water quality standards, which are consistent with EPA's 1986 bacteria criteria but apply only to those swimming waters within 300 meters of shore. This commenter also suggested that the criteria should only have to apply at depths of less than 150 feet. EPA does not find these comments persuasive in light of the clear language of Clean Water Act sections 303(i) and 502(21), which together require the adoption of criteria for all of the coastal or Great Lakes waters designated by the State for use for swimming, bathing, surfing, or similar water contact activities even if, as a factual matter, the waters designated for swimming are not frequently or typically used for swimming.

One commenter expressed concern that the rule could establish a binding precedent for EPA's review of pathogen criteria for inland waters that do not fall within the definition of a coastal recreation water. As discussed above, section 303(i) of the Clean Water Act does not apply to inland waters other than the Great Lakes because such waters are explicitly excluded from the definition of ''coastal recreation waters'' in section 502(21) of the Clean Water Act. For all other waters (*i.e.*, waters that are not coastal recreation waters), section 303(c) of the Clean Water Act and EPA's implementing regulations at 40 CFR part 131 require States, Territories, and authorized Tribes to adopt criteria that are scientifically defensible and sufficient to protect the designated uses of those waters. When EPA reviews a State's, Territory's or authorized Tribe's new or revised water quality standards, EPA applies its regulations at 40 CFR 131.5 and 131.6. EPA's decision on future State or Territorial submissions will be based on the information supporting those submissions. EPA's decisions in today's rule should not be considered as binding on States and Territories adopting bacteria criteria for inland waters other than the Great Lakes.

B. Criteria for Pathogen Indicators

1. Selection of Pathogen Indicator

For States and Territories covered by today's rule, EPA is promulgating water quality criteria using the pathogen indicators of enterococci for marine waters and both enterococci and *E. coli* for freshwaters. EPA interprets Clean Water Act section 303(i)(1)(A) to require States and Territories to adopt and submit water quality criteria for enterococci in marine waters and either enterococci or *E. coli* in fresh waters because it requires States and Territories to submit criteria ''for the pathogens and pathogen indicators for which the Administrator has published criteria under section 304(a).'' EPA's 1986 bacteria criteria document is the relevant Clean Water Act section 304(a) criteria referred to in Clean Water Act section 303(i)(1)(A). It recommends the use of enterococci in marine waters and *E coli* or enterococci in fresh waters for the protection of primary contact recreation. Clean Water Act section 303(i)(2)(A) requires EPA to promptly propose regulations for the State setting forth revised or new water quality standards for pathogens and pathogen indicators described in Clean Water Act section 303(i)(1)(A) for coastal recreation waters of the State for those States that fail to adopt criteria that are as protective of human health as the criteria referenced in section 303(i)(1)(A).

In the proposal (69 FR 41727), EPA proposed to adopt only *E. coli* for freshwaters because most of the States and Territories that had adopted or were in the process of adopting the 1986 bacteria criteria had chosen to use *E. coli* instead of enterococci. However, EPA also solicited comment on whether to promulgate criteria based on both indicators for freshwater and to allow States and Territories to choose which indicator to apply to its coastal recreation waters at the time of

implementation. EPA received comments from the New York Department of Environmental Conservation (DEC) and the Pennsylvania Department of Environmental Protection (DEP) requesting EPA to do so. Both of these State agencies have responsibility for promulgating State water quality standards. New York DEC explained that the New York Department of Health had recently adopted regulations adding both *E. coli* and enterococci as the criteria for its freshwater bathing beaches, and that the New York DEC was in the process of deciding which of the two indicators it would adopt for its water quality standards in the Great Lakes. Consequently, New York DEC requested that EPA's final rule include values for both indicators and allow the State to select either at the time of implementation. Pennsylvania DEP explained that the Pennsylvania Department of Health had adopted *E. coli* criteria for public bathing beaches, but also requested that EPA promulgate a final rule allowing Great Lakes States to choose either *E. coli* or enterococci criteria at the time of implementation. Pennsylvania DEP offered no reason for its request. None of the other States included in the proposal with fresh coastal recreation waters commented on this aspect of the proposal.

As requested by these States, EPA is promulgating criteria for both indicators and allowing New York and Pennsylvania determine which indicator to apply for each waterbody. EPA also determined that it is reasonable to extend this flexibility to all of the Great Lakes States covered by this rule. Accordingly, EPA has added the freshwater criteria values for enterococci to the table in 40 CFR 131.41(c)(1) as well as a footnote to the table explicitly recognizing that the State may decide which indicator, *E. coli* or enterococci, will be the applicable criterion for its freshwater coastal recreation water (*i.e.*, which criteria apply to the Great Lakes waters within the State's jurisdiction). Until a State makes that determination, *E. coli* will be the applicable indicator.

EPA is providing this flexibility to all Great Lakes States in the rule because the Great Lakes States have a history of cooperating to protect the Great Lakes resource, and may find a need to agree on a consistent pathogen indicator for the Great Lakes. Because both the *E. coli* and enterococci freshwater criteria in the 1986 bacteria criteria have the same illness rate they provide equal protection against acute gastrointestinal illness. In light of these considerations, EPA does not want to create a barrier to this cooperation by promulgating only one of the two freshwater criteria in some Great Lakes States and both indicators in other Great Lakes States.

2. Bacteria Criteria Values

EPA is promulgating a geometric mean of 35/100 ml for enterococci in marine coastal recreation waters and four different single sample maximums, which vary for marine coastal recreation waters based on intensity of use as shown in Table 2. These are the same values as in the 1986 bacteria criteria document and in the proposed rule.

TABLE 2.—AMBIENT MARINE WATER QUALITY CRITERIA FOR BACTERIA

A Indicator	B Geometric mean	C Single sample maximum (per 100 ml)			
		C1 Designated bathing beach (75% confidence level)	C2 Moderate use coastal recreation waters (82% confidence level)	C3 Light use coastal recreation waters (90% confidence level)	C4 Infrequent use coastal recreation waters (95% confidence level)
Enterococci	35/100 ml [a]	104 [b]	158 [b]	276 [b]	501 [b]

Footnotes to table in paragraph (c)(2):
[a] This value is for use with analytical methods 1106.1 or 1600 or any equivalent method that measures viable bacteria.
[b] Calculated using the following: single sample maximum = geometric mean * 10^(confidence level factor * log standard deviation), where the confidence level factor is: 75%: 0.68; 82%: 0.94; 90%: 1.28; 95%: 1.65. The log standard deviation from EPA's epidemiological studies is 0.7.

For fresh coastal recreation waters, EPA is also promulgating a geometric mean of 126/100 ml for *E. coli* and a geometric mean of 33/100 ml for enterococci with four different single sample maximums, which vary based on intensity of use. As described above, only the criteria for one of these indicators will apply in freshwaters at the choice of the State. These values are shown in Table 3, and are the same values as in the 1986 bacteria criteria document. For *E. coli,* these values are the same as those that EPA proposed. EPA is also promulgating criteria for enterococci in freshwater based on the request of two Great Lakes States and used the values from the 1986 bacteria criteria document for these enterococci criteria.

TABLE 3.—AMBIENT FRESHWATER QUALITY CRITERIA FOR BACTERIA

A Indicator [d]	B Geometric mean	C Single sample maximum (per 100 ml)			
		C1 Designated bathing beach (75% confidence level)	C2 Moderate use coastal recreation waters (82% confidence level)	C3 Light use coastal recreation waters (90% confidence level)	C4 Infrequent use coastal recreation waters (95% confidence level)
E. coli	126/100 ml [a]	[b] 235	[b] 298	[b] 409	[b] 575
Enterococci	33/100 ml [c]	[b] 61	[b] 78	[b] 107	[b] 151

Footnotes to table in paragraph (c)(1):

[a] This value is for use with analytical methods 1103.1, 1603, or 1604 or any equivalent method that measures viable bacteria.
[b] Calculated using the following: single sample maximum = geometric mean * 10^(confidence level factor * log standard deviation), where the confidence level factor is: 75%: 0.68; 82%: 0.94; 90%: 1.28; 95%: 1.65. The log standard deviation from EPA's epidemiological studies is 0.4.
[c] This value is for use with analytical methods 1106.1 or 1600 or any equivalent method that measures viable bacteria.
[d] The State may determine which of these indicators applies to its fresh coastal recreation waters. Until a State makes that determination, *E. coli* will be the applicable indicator.

In proposed 40 CFR 131.41(c), EPA included footnotes to the geometric mean values for *E. coli* and enterococci stating that ''[t]his value is for use with [specified] analytical methods * * * or any equivalent viable method.'' The specified methods are based on measurement of viable bacteria. New analytical methods that rely on genetic material for measurement may yield different results that are not appropriately calibrated to the numeric criteria in today's rule. To address this concern, EPA is identifying, as in the proposal, the specific methods that must be used to apply the bacteria criteria.

In today's rule, EPA is also making two minor changes to this aspect of the proposal. First, EPA had incorrectly identified the analytical methods for enterococci as being for *E. coli* and the analytical methods for *E. coli* as being for enterococci, and is correcting this technical error in the footnotes in the final rule. Second, EPA has revised the footnotes to explain more clearly what the methods are. The footnotes state: ''This value is for use with [specific methods] or any equivalent method that measures viable bacteria.''

EPA notes that today's rule does not specify the duration over which the geometric mean is calculated. The criteria in the tables at 40 CFR 131.41(c) are identical to those in table 4 of the 1986 bacteria criteria document, which does not specify the duration for computing the geometric mean. The 1986 bacteria criteria document discusses the duration over which the mean is calculated in two places. The first is in the discussion of the basis for the criteria (page six). Here, EPA calculated the geometric mean bacteria density over a summer swimming season (recreation season). The second place is in the summary of the criteria (page 16) where EPA stated that ''[b]ased on a statistically sufficient number of samples (generally not less than 5 samples equally spaced over a 30-day period), the geometric mean.* * *'' EPA considers this statement in the 1986 bacteria criteria document to provide guidance on how a regulatory agency could compute the geometric mean, and not as a definition of the specific period over which the mean must be computed. For the geometric mean to be only computed over a 30-day period would mean that regulatory agencies would need to sample more than once a month, which is contrary to the guidance on monitoring provided in the 1986 bacteria criteria document. EPA expects from current practice by States and Territories that they will compute the geometric mean on either a monthly or recreation season basis.

EPA is not specifying in the final rule how the averaging period for the geometric must be applied. EPA recommends that the averaging period be applied as a ''rolling'' or ''running'' average. EPA expects that most States will in fact apply the averaging period as a rolling average; however, EPA also recognizes that it would be technically appropriate to apply the averaging period on a set basis such as monthly or recreation season. EPA therefore has concluded that it is appropriate to allow the States to exercise discretion in deciding how to apply the averaging period for the geometric mean.

3. Use of the Single Sample Maximum

EPA is promulgating the single sample maximum values that it proposed without change, but is clarifying its expectations with regard to how these values could be used in the context of beach notification and closure decisions, and in the context of the implementation of other Clean Water Act programs. EPA expects that the single sample maximum values would be used for making beach notification and closure decisions. EPA recognizes, however, that States and Territories also use criteria in their water quality standards for other purposes under the Clean Water Act in order to protect and improve water quality. Other than in the beach notification and closure decision context, the geometric mean is the more relevant value for ensuring that appropriate actions are taken to protect and improve water quality because it is a more reliable measure, being less subject to random variation, and more directly linked to the underlying studies on which the 1986 bacteria criteria were based. Nevertheless, the single sample maximum can play a role in identifying potential pollution episodes, especially in waters that are prone to short-term spikes in bacteria concentrations, *e.g.*, waters that may be affected by a combined sewer overflow outfall. Having identified that a water is prone to short-term spikes in bacteria concentrations due to pollution episodes, States and Territories have significant flexibility in how they address those episodes consistent with the Clean Water Act and implementing regulations. (Note that additional guidance on making water quality standard attainment status determinations may be found in EPA's guidance to States on integrated reporting of water quality for sections 303(d) and 305(b) purposes.)

EPA received considerable comment on this topic. Some comments addressed the issue of whether the single sample maximum should be part of the criteria that applies in all applications, including beach closure, waterbody assessment, Total Maximum Daily Load establishment, and National Pollutant Discharge Elimination System permitting decisions, or instead was only designed for beach notification and closure decisions. Most commenters expressed their interpretation of the 1986 bacteria criteria document as discussing the single sample maximum only in the context of making beach decisions based on limited data. Several of these commenters argue that the geometric mean criterion was included in the 1986 bacteria criteria document for protection against acute gastrointestinal illness in other contexts, and that the single sample maximum was included as a tool to implement the criteria in beach monitoring situations, and therefore, was not necessary to provide protection in other contexts. Other commenters asserted that the single sample maximum should be used for all Clean Water Act purposes.

EPA notes that the 1986 bacteria criteria document clearly identifies the single sample maximum values as part of the criteria, in addition to the geometric mean values. Therefore, consistent with section 303(i)(2)(A) of the Clean Water Act, EPA is promulgating them today. EPA recognizes that the single sample maximum discussion in the 1986 bacteria criteria document refers only to beach monitoring, and does not discuss how or whether the single sample maximum should be implemented for other Clean Water Act applications, such as establishing Total Maximum Daily Loads or National Pollutant Discharge Elimination System permit limitations. EPA agrees that the single sample maximum values in the criteria

are best used for making beach notification and closure decisions. However, as noted above, they may, but need not, also play a role in implementing other Clean Water Act programs. Except in the beach notification and closure context, EPA expects that States will determine how to use the single sample maximum criteria in the context of their broader programs implementing the Clean Water Act.

For beach monitoring and beach notification and closure decisions, beach managers frequently need to make beach decisions based on one or very few data points. Thus, having a trigger level for a single sample value enables beach managers to make an immediate decision for the protection of public health at beaches. The beach manager will frequently not be able to obtain sufficient samples to compute a geometric mean for the purposes of making a decision to close a beach or issue a beach advisory. Of the 2,823 beaches reporting information to EPA in 2002, 65% reported that pathogen levels were monitored at least once per week (*EPA's Beach Watch Program: 2002 Swimming Season,* EPA 823–F–03–007, May 2003, *http://www.epa.gov/waterscience/beaches/beachwatch2003-newformat.pdf).* This means that at 35% of the beaches, the beach managers had fewer than four samples each month for making decisions to open or close the beach and in many cases only had one sample in any week. Furthermore, beach management programs need to be able to respond rapidly to short-term changes in water quality. Because a geometric mean provides information pertaining to water quality that looks backwards in time, it is not necessarily useful in determining whether a beach is safe for swimming on a particular day.

EPA's *National Beach Guidance and Required Performance Criteria for Grants* (EPA–823–B–02–004, June 2002) requires States and Territories receiving Clean Water Act section 406 implementation grants to either immediately issue a public notification or, if there are reasons to doubt the accuracy of the first sample, resample when any sample surpasses a water quality standard at beaches. Although this requirement pertains only to the States and Territories receiving these grants, given that the States and Territories covered by this rule receive Clean Water Act section 406 implementation grants, it reflects the actions that States and Territories will be expected to take when a sample shows an exceedance of the applicable single sample maximum in today's rule. (EPA notes that all 35 eligible coastal States and Territories received grants in 2003, and most have received these grants in 2004.) In other words, States and Territories will use a single sample maximum to trigger a notification or closure action at beaches; whether the action taken is an advisory or a closure depends on the decision rules established by the State, Territory or local beach management authority, although the *National Beach Guidance and Required Performance Criteria for Grants* requires the State or Territory to provide a notification of the exceedance. Using a single sample maximum is especially important for beaches that are infrequently monitored or prone to short-term spikes in bacteria concentrations, *e.g.*, waters that may be affected by combined sewer overflow outfalls. Thus, consistent with the 1986 bacteria criteria document, EPA expects that States and Territories would apply the single sample maximums for making beach notification decisions as values that if exceeded would trigger a notification or closure action at the beach.

Numerous commenters said that application of the single sample maximum values in the criteria as never-to-be-surpassed limitations in other contexts could lead to consequences which were not contemplated in the 1986 bacteria criteria document, including, for example, Total Maximum Daily Loads and National Pollutant Discharge Elimination System permit limitations which might be technologically and economically unattainable at a particular location. EPA agrees that the 1986 bacteria criteria document did not discuss using the single sample maximum as a never-to-be-surpassed value for all implementation applications under the Clean Water Act.

In developing the 1986 bacteria criteria document, EPA derived single sample maximums as upper percentiles of the frequency distributions around the geometric mean. The 1986 bacteria criteria document recognizes that there will be instances where the concentration of bacteria in one or more individual samples will be higher than the acceptable geometric mean concentration. This is to be expected when dealing with water quality criteria expressed as average concentrations over a period of time. For example, in a waterbody with a 30-day average concentration exactly at the water quality criterion, it can be expected that approximately half of the samples collected will have a concentration above the criterion concentration (*e.g.*, 126/100 ml for *E. coli*), while the other half of the samples will have lower concentrations. Thus, that the value of one sample is greater than the numerical value of the geometric mean criterion, or even the numerical value of the single sample maximum, does not necessarily indicate that the geometric mean criterion has actually been exceeded. Furthermore, the single sample maximum values in the 1986 bacteria criteria document were not developed as acute criteria; rather, they were developed as a statistical construction to allow decision makers to make informed decisions to open or close beaches based on small data sets. This does not mean single sample maximums serve no purpose outside of beach notification decisions. For example, they may give States and Territories the ability to make waterbody assessments where they have limited data for a waterbody. However, the single sample maximums were not designed to provide a further reduction in the design illness level provided for by the geometric mean criterion.

Based on the derivation of the single sample maximums as percentiles of a distribution around the geometric mean, using the single sample maximums as values not to be surpassed for all Clean Water Act applications, even when the data set is large, could impart a level of protection much more stringent than intended by the 1986 bacteria criteria document. For example, in marine waters the geometric mean criterion for enterococci is 35/100 ml, and the single sample maximum is 104/100 ml at designated bathing beach waters based on the 75th percentile of the distribution of individual values around the mean. If that single sample maximum were used as a value-not-to-be-surpassed, it would become a maximum value and all other values in the statistical distribution of individual measurements would have to be less than the maximum. EPA typically uses the 99th percentile of a distribution to derive regulatory maximums. Assuming a waterbody had the same standard deviation in concentrations of bacteria employed in deriving the single sample maximums (*e.g.*, 0.7 for marine waters), the waterbody geometric mean needed to keep the waterbody concentration below 104/100 ml 99% of the time would be 2/100 ml. This would be far more stringent than the level of protection provided by the actual geometric mean criterion for enterococci of 35/100 ml. Therefore, EPA intends that States and Territories should retain the discretion to use single sample maximum values as they deem appropriate in the context of Clean Water Act implementation programs other than beach notification and

closure, consistent with the Clean Water Act and its implementing regulations.

The final rule does not constrain States and Territories flexibility in how they use the single sample maximum values in the context of Clean Water Act implementation programs such as Total Maximum Daily Loads and National Pollutant Discharge Elimination System permit requirements, as long as the geometric mean criteria for *E. coli* and enterococci are met. The flexibility afforded to States and Territories in applying the single sample maximum values in the National Pollutant Discharge Elimination System permitting program does not mean that maximum daily or seven-day average permit limits for bacteria are inappropriate for National Pollutant Discharge Elimination System permits. EPA notes that maximum daily and 7-day average effluent limits can be calculated based on 30-day average conditions and an understanding of effluent variability. See Section 5.4.4 of EPA's *Technical Support Document for Water Quality-based Toxics Control* (EPA–505–2–90–001, March 1991). (These procedures are based on statistical methodologies similar to those employed in deriving the single sample maximums in the 1986 water quality criteria for bacteria.) EPA's recommendation that the single sample maximum values in the 1986 bacteria criteria document should be used primarily for making beach notification and closure decisions does not constrain States' use of maximum daily permit limits in accordance with current State permitting procedures.

EPA received a few comments about the specific use of single sample maximums in making waterbody assessment decisions, for example, in the development of Clean Water Act section 305(b) reports or developing section 303(d) lists. One commenter stated that the single sample maximum should not be used solely as the means for deciding if a waterbody was impaired. Another commenter stated that one sample should not be used to characterize a waterbody. Yet another commenter suggested that the single sample maximum only be used when there were insufficient data to compute a geometric mean.

In general, EPA agrees with these comments. As discussed above, EPA recognizes the utility of single sample maximums where there are insufficient data (generally fewer than five samples over a given period) to compute a geometric mean for the purposes of assessing waterbodies, and expects that States and Territories will use single sample maximums in these instances. While it is far preferable for States and Territories to obtain more robust data for making decisions about waterbody impairments (the 1986 bacteria criteria document recommends determining the geometric mean using generally not less than 5 samples equally spaced over a 30-day period), EPA recognizes that in some instances States and Territories will have limited data and may decide to use the single sample maximums or other similarly derived statistical constructs for making waterbody impairment decisions.

4. Intensity of Use Categories of Coastal Recreation Waters

EPA is promulgating the same intensity of use categories of coastal recreation waters as in the proposal, specifically, the four categories of waters with a corresponding single sample maximum as described in the 1986 bacteria criteria document. Only one single sample maximum applies to each category of coastal recreation water: designated bathing beach waters, moderate use coastal recreation waters, light use coastal recreation waters, and infrequent use coastal recreation waters. EPA is also promulgating the definitions of the categories as proposed. By providing definitions for the four categories, EPA provides clear guidance to States and Territories and information for the public to identify the category in which each coastal recreation water belongs based on its intensity of use for primary contact recreation.

EPA does not have sufficient information regarding frequency of use of each specific coastal recreation water covered by this rule to list all those waters in the rule according to the four categories defined in 40 CFR 131.41(b). Therefore, EPA does not list individual coastal recreation waters by intensity of use category. EPA recommends that States and Territories evaluate existing use information and identify which individual coastal recreation waters belong to each category and make this information publicly available (*e.g.*, on a State's or Territory's website). As explained in the preamble to the proposed rule (69 FR 41726), States and Territories could use their existing beach tiering process for BEACH Act implementation grants as a source of information for determining frequency in categorizing a coastal recreation water for purposes of determining the applicable single sample maximum.

Today's rule does not require that States and Territories apply the definitions at 40 CFR 131.41(b) such that the State or Territory finds at least one water for each of the four categories of waters. A State or Territory could, at its discretion, apply the single sample maximum for designated bathing beaches (the lowest single sample maximum) to all its coastal recreation waters because this approach would be more protective of human health than the structure for single sample maximums in 40 CFR 131.41(b) and (c). Thus, a State or Territory that had commented that it preferred that EPA promulgate only one category of waters could exercise its discretion and apply the single sample maximum for designated bathing beaches to all of its waters. Alternatively, a State or Territory may choose to place their coastal recreation waters in only two of the four single sample maximum categories, such as the 75% confidence level single sample maximum for designated bathing beaches and the 95% confidence level single sample maximum for all other coastal recreation waters, if the recreational usage of the waters matches the definitions at 40 CFR 131.41(b). This approach would be appropriate if the State or Territory determined that the ''infrequent use'' definition was the most appropriate categorization for its coastal recreation waters that were not identified as designated bathing beaches. Although the rule does not specify which State waters belong in which use category, the definitions in the rule must be used to determine which single sample maximum would apply to a particular coastal recreation water.

A number of comments requested that EPA promulgate only the 75% confidence level criterion for all coastal recreation waters because having only one single sample maximum would provide for consistency in all coastal recreation waters, and provide the same level (and highest level) of protection to all users of coastal recreation waters, no matter what the use intensity of that particular water might be.

EPA declines to take this approach in today's rule. EPA acknowledges the reasons expressed in the comments. However, EPA believes this would be more restrictive than necessary to ensure that the promulgated water quality criteria are as protective of human health as the 1986 bacteria criteria document, which provides single sample maximums for four categories of waters. Thus, such an approach would unnecessarily restrict the flexibility of States and Territories to determine when to impose standards more protective than EPA's 1986 bacteria criteria. EPA normally defers to a State's or Territory's decision on what criteria apply to protect a designated use subject to the State or Territory

providing information to show that the water quality criteria are sufficient to protect the designated uses, and for coastal recreation waters, that the water quality criteria are as protective of human health as the criteria for the pathogen or pathogen indicators that EPA has published. EPA does not consider the benefits of identical standards in the States and Territories covered by this rule to outweigh the negative effects of unnecessarily constraining the flexibility that the Clean Water Act and EPA's rules give States and Territories in establishing water quality standards, particularly because there is already variation in the single sample maximums in use among States and Territories that are not covered by today's rule.

5. Intrastate vs. Interstate Determinations of Use Intensity

In today's final rule, as in the proposal, single sample maximums apply to categories of waters based on intensity of use. These categories are based on intrastate comparisons of frequency of use (*i.e.*, relative to the other waters within that State or Territory). Using this approach, a State or Territory will identify its designated bathing beach waters first and then evaluate all other waters in comparison to those waters. However, today's rule does not require that a State or Territory use all four categories of intensity of use. Rather, EPA expects that States and Territories will first identify portions of waters as designated bathing beaches based on the factors listed in 40 CFR 131.41(b)(2) and then categorize the remaining waters based on their intensity of use relative to those beaches. In interpreting the phrase ''heavily used,'' EPA expects States will make reasonable judgments about the level of use at a given beach. EPA does not intend that States should exclude heavily used waters from the designated bathing beach category merely because they can identify other beaches, either within the State or in other States, that are more heavily used.

While several commenters supported intrastate comparison of intensity of use, others suggested using an interstate comparison of intensity of use because beach use varies significantly across States and Territories. While EPA recognizes that beach use intensity varies significantly across the nation, EPA does not agree that interstate comparisons are the best approach for categorizing use intensity. An interstate approach could result in some States or Territories comparing their beaches only to the most heavily used beaches in the nation and determining that they have no beaches warranting protection at the 75% confidence level. Rather, States and Territories will need to evaluate the intensity of use of their own beaches, independent of beaches in the rest of the nation, and assign the beaches to categories based on the definitions provided in 40 CFR 131.41(b). This does not mean that there is any minimum number or percentage of beaches that must be placed in the designated bathing beach category. Rather, States should identify those beaches, if any, in the State which satisfy the criteria for this category and then assign the remaining waters to one or more of the lower intensity of use categories as appropriate. Intrastate comparison of use will allow States and Territories the flexibility to provide the level of protection that is appropriate to visitors to beaches with different intensities of use.

In today's rule, EPA is also making a minor change to this aspect of the proposed rule. The Agency added text to the definition of ''designated bathing beach'' in 40 CFR 131.41(b)(2) to provide expressly that the determination of ''heavy use'' is based on an evaluation of use within the State, which is consistent with the above discussion.

6. State Calculation of Site-Specific Single Sample Maximums

EPA is promulgating, as proposed, default single sample maximums based on the 75, 82, 90, and 95% confidence levels, along with the equation to calculate site-specific single sample maximums. EPA calculated the values for the single sample maximums in tables 2 and 3 using the standard deviations observed during the EPA epidemiological studies. The Agency recognizes that standard deviations observed in EPA's epidemiological studies may not coincide with that for a particular waterbody. States and Territories may decide to collect data to calculate site-specific standard deviations. To compute the site-specific log standard deviation in a statistically meaningful way as explained in the preamble to the proposed rule (69 FR 41727), today's rule requires that the States and Territories collect at least 30 samples in a single recreation season (see 40 CFR 131.41(c)(3)). If this requirement is met, the State or Territory may use the resulting site-specific standard deviation to calculate a corresponding single sample maximum.

EPA considers that the calculation of site-specific single sample maximums as specified in 40 CFR 131.41(c)(3) provides enough detail on the calculation that States and Territories can implement the provision of the rule without needing to adopt it as a site-specific water quality criterion. As a result, States and Territories do not need EPA review and approval under 40 CFR Part 131 in their application of 40 CFR 131.41(c)(3).

All commenters that addressed this issue supported EPA's proposal to require 30 samples to derive a site-specific standard deviation; however, one commenter stated that States and Territories should be allowed to collect the samples over two recreation seasons if there were not significant differences in bacteria concentrations over the two-year period. The commenter explained that States and Territories may find it difficult to collect 30 samples in one recreation season. EPA recognizes the difficulty in collecting the required number of samples over a single recreation season, but the Agency has nonetheless concluded that collecting this data during a single season is necessary in order to capture the variability inherent in bacteria concentrations at a site over the period of a single season without introducing additional variability from extreme weather conditions such as drought or El Niño conditions. Using 30 samples over more than one recreation season could affect the outcome of the single sample maximum such that it may not be as protective of human health as EPA's 1986 bacteria criteria.

7. Addressing Non-Human Sources of Bacteria

EPA is adopting the approach preferred in the proposal for addressing non-human sources of bacteria. In today's rule, EPA added footnote ''e'' to 40 CFR 131.41(c)(1) and footnote ''c'' to 40 CFR 131.41(c)(2) to describe this approach for addressing non-human sources of bacteria. The footnotes state: ''These values apply to [*E. coli* or enterococci] regardless of origin unless a sanitary survey shows that sources of the indicator bacteria are non-human and an epidemiological study shows that the indicator densities are not indicative of a human health risk.'' Specifically, States and Territories must apply the E. coli and enterococci criteria to all coastal recreation waters. If, however, sanitary surveys and epidemiological studies show the sources of the indicator bacteria to be non-human and the indicator densities do not indicate a human health risk, then it is reasonable for the State or Territory to not consider those sources of fecal contamination in determining whether the standard is being attained. This is the approach taken in the 1986

bacteria criteria document. It would be reasonable for a State or Territory to use existing epidemiological studies rather than conduct new or independent epidemiological studies for every waterbody if it is scientifically appropriate to do so.

EPA also anticipates that a State or Territory that has conducted a sanitary survey and an epidemiological study to show that the sources of the indicator bacteria in a waterbody are non-human and that the indicator densities do not indicate a health risk to those swimming in the waters, will apply the criteria in today's rule where a change in circumstances affecting the waterbody makes it appropriate to do so. For example, the criteria would apply to a waterbody in which there is a subsequent sewer line break or other later occurrence that results in the introduction in the waterbody of bacteria that is a human health risk to those using the waters for primary contact recreation.

EPA is promulgating this approach because Clean Water Act section 303(i)(2)(A) requires EPA to propose criteria which are ''as protective of human health as'' EPA's 1986 bacteria criteria in cases where a State or Territory has failed to do so. While EPA's scientific understanding of pathogens and pathogen indicators has evolved since 1986, data characterizing the public health risk associated with non-human sources is still too limited for the Agency to promulgate another approach.

Almost half of the commenters addressed some or all of the approaches to exempting non-human sources of fecal contamination described in the proposed rule (69 FR 41729–41731). Several commenters expressed support for EPA's preferred approach. EPA agrees that the criteria should apply unless sanitary surveys and epidemiological studies show the sources of the indicator bacteria to be non-human and that the indicator densities are not indicative of a human health risk. This is the approach taken in the 1986 bacteria criteria document.

Some commenters expressed a preference for not allowing any exclusion of non-human sources from the criteria. They emphasized the significance of the human health risk associated with any type of fecal contamination and asserted that this approach would be most protective of human health. EPA does not agree that this approach is necessary for States to adopt if an epidemiological study demonstrates that non-human sources do not pose a risk to human health at a given waterbody.

Several commenters supported a non-human source exclusion based on sanitary surveys only. In general, these commenters expressed concern about the cost of epidemiological studies, especially in areas where evidence of human fecal contamination was absent. EPA has found the scientific understanding of the human health risks associated with non-human sources of fecal contamination is still too incomplete to promulgate this option. In the proposed rule (69 FR 41730–41731), EPA cited several instances where studies have attributed disease outbreaks to non-human sources of fecal contamination. Given the potential human health risk from non-human sources of fecal contamination, EPA concludes that this option would not be as protective of human health as the 1986 bacteria criteria.

Some commenters supported exclusion of bacteria from wildlife sources from the criteria because wildlife sources may pose less of a risk to human health than human sources or domestic animal and livestock sources. Other commenters raised issues with the reliability of current bacteria source tracking methods that may be needed to support this exclusion. EPA finds the scientific understanding of the human health risks associated with wildlife sources of fecal contamination still too incomplete to support promulgation of this option. Once again, EPA concludes that this option is not as protective as the 1986 bacteria criteria.

Many commenters expressed the need for more research on non-human sources. Commenters emphasized two major areas of needed research: research on bacterial source tracking methods to better distinguish between different types of bacteria contamination and research on the health risks associated with different types of non-human fecal contamination. EPA expects to conduct research in these areas as time and resources allow. EPA also encourages others to continue to conduct research in these areas.

C. Applicability of Today's Rule

1. Applies in Addition to Any State/Territorial Criteria

EPA is promulgating the rule as proposed with respect to the interaction of today's criteria with existing State and Territorial water quality criteria. Under today's rule, the promulgated criteria do not replace existing bacteria criteria for coastal recreation waters already adopted by States and Territories (and for those adopted after May 30, 2000, approved by EPA). Rather, today's promulgated criteria apply for Clean Water Act purposes in addition to any existing State or Territorial criteria already applicable to those waters. This will ensure that, where commercial shellfishing and primary contact recreation occur in the same coastal recreation waters, both uses will be adequately protected by existing State and Territorial standards (which generally still use fecal coliform) and the new standards for either *E. coli* or enterococci. States and Territories may also continue to use existing criteria for fecal coliform to supplement the new indicators for the purposes of waterbody assessment and other purposes where ambient data are needed. The dual sets of bacteria criteria also will enable regulatory decisions and actions to continue while collecting data for the newly adopted *E. coli* or enterococci criteria. For States and Territories included in today's rule, EPA expects that States and Territories will be actively collecting data on *E. coli* and/or enterococci and working to incorporate *E. coli* and/or enterococci water quality criteria into their water quality programs, *e.g.*, National Pollutant Discharge Elimination System, Clean Water Act section 305(b), and Clean Water Act section 303(d) programs. As they accomplish this, States and Territories may phase out their use of fecal coliform as a supplemental indicator to protect primary contact recreation. While EPA cannot remove or revise existing State or Territorial standards, EPA believes that it would not be an efficient use of resources for States and Territories to base Clean Water Act actions related to protection of primary contact recreation on both fecal coliform and the new, preferred indicators. However, if States believe their existing standards are as protective as the criteria in today's rule, they may submit data to EPA to support this determination, and if EPA then determines that the State standards are at least as protective as the criteria in today's rule, EPA will withdraw the Federal criteria for that State. (See section V.C.) States and Territories are encouraged to expeditiously revise their water quality standards to remove fecal coliform criteria as an indicator for primary contact recreation where it has been replaced by the new indicators in their implementation of the Clean Water Act. Today's rule also provides in 40 CFR 131.41(d)(1) that new EPA-approved bacteria criteria in State or Territorial water quality standards become the effective Clean Water Act criteria upon their approval, replacing the criteria in today's rule.

EPA received very few comments on this topic. All commenters addressing this topic supported EPA's proposal that once EPA approves a State's or Territory's standards as being as protective of human health as EPA's 1986 bacteria criteria, the EPA-approved bacteria criteria in State or Territorial water quality standards would become effective for Clean Water Act purposes and EPA's promulgated criteria would no longer apply. EPA will still remove the State or Territory from 40 CFR 131.41, but any delay in that process would not delay the approved State criteria from becoming the sole applicable criteria for Clean Water Act purposes.

2. Role of State/Territorial General Rules of Applicability

Today's rule, like the proposal, makes today's criteria subject to States' and Territories' general rules of applicability in the same way and to the same extent as are other Federally-adopted or State-adopted numeric criteria. EPA received a few comments on this topic and these generally pertained to mixing zones. One commenter suggested that the final rule prohibit the use of mixing zones to comply with today's criteria. The commenter said that the use of mixing zones would not be as protective of human health as the 1986 bacteria criteria. Another commenter supported allowing States to apply their existing mixing zone provisions.

EPA appreciates the concerns of commenters regarding human health risks of exposure to fecal contamination within mixing zones. However, EPA has determined that the Agency's existing guidance provides sufficient direction to permitting authorities as they implement State or Territorial mixing zone policies. EPA's *Water Quality Standards Handbook: Second Edition* (EPA–823–B–94–005a, August 1994) as well as EPA's *Technical Support Document for Water Quality Based Toxics Control* (EPA–505–2–90–001, March 1991) advise against the use of mixing zones where the location may pose a significant health risk. These documents stress the importance of determining the appropriate placement and size of mixing zones depending on the potential effects to human health and the environment. As a result, EPA is not prohibiting the application of mixing zones in the final rule in cases where they would be allowed under existing State and Territorial programs.

D. Compliance Schedules

Where a State or Territory does not have a regulation that is in effect for Clean Water Act purposes authorizing compliance schedules for water quality-based effluent limits, EPA proposed to authorize, but not require, the permit issuing authority to include compliance schedules in permits under appropriate circumstances. EPA also proposed that if a State or Territory has a regulation in effect authorizing compliance schedules for Clean Water Act purposes then that compliance schedule regulation could be used in implementing the water quality standards in this rule; it would not be affected by the final rule. Because EPA recognizes that a State or Territory without a regulation authorizing compliance schedules may not want such a regulation, in the preamble to the proposed rule, EPA asked such States to notify EPA prior to promulgation. No State or Territory notified EPA that it does not want the ability to use the compliance schedule provision in today's rule. Therefore, EPA is not including in today's final rule any regulatory text identifying States or Territories that do not want a compliance schedule provision for their standards.

EPA received several comments in support of the allowance for compliance schedules. One commenter requested that EPA remove the requirement that a permittee request a compliance schedule; this commenter believed that the permitting authority could determine whether the permittee needed time to comply with the new effluent limitation based on the criterion. EPA disagrees that it needs to make this change because the rule does not impose a requirement for a request. The rule at 40 CFR 131.41(f)(3) provides permittees with the opportunity to request a compliance schedule where the permittee reasonably believes it will be infeasible to immediately achieve the new limitation, but it does not require them to do so. The permitting authority also has the discretion to suggest the need for compliance schedules as part of the permit even if the permittee does not initiate a request for one.

One commenter supported the definition of a new pathogen discharger. Another commenter requested clarification that the definition does not apply to relocated combined sewer overflow outfalls. EPA agrees that the definition does not apply to relocated combined sewer overflow outfalls. The rule at 40 CFR 131.41(f)(2) does not authorize compliance schedules for new pathogen dischargers because EPA recognizes that a new discharger could design and build a new treatment system, which will meet the new water quality-based requirements more efficiently (69 FR 41736). However, a relocated combined sewer overflow outfall is not a new discharge, rather it is an existing discharge being released at an alternate location. The relocating of the outfall does not necessarily provide an opportunity for the discharger to apply additional controls or reduce pathogen loads to the extent anticipated for a new pathogen discharger. EPA's Combined Sewer Overflow Control Policy, published on April 11, 1994, recommends that Long Term Control Plans consider relocating overflow away from sensitive areas wherever physically possible and economically achievable (59 FR 18688, 18692). In today's final rule, EPA has added text to the definition of a ''new pathogen discharger'' in 40 CFR 131.41(b)(6) to provide expressly that ''[i]t does not include relocation of existing combined sewer overflow outfalls.''

Many commenters addressed the length of the compliance schedule. Some commenters supported capping the length of the compliance schedule at five years, while one commenter suggested that three years should be sufficient. Other commenters suggested that compliance schedules longer than five years may be necessary, or that the rule should not specify the length of a compliance schedule, but rather allow the permitting authority to exercise discretion in determining how much time is necessary for each discharger. Finally, several commenters noted that combined sewer overflow systems may need compliance schedules longer than five years, and that the compliance schedule provision of the rule should be consistent with EPA's Combined Sewer Overflow Control Policy and the requirements of Clean Water Act section 402(q).

EPA has determined that five years is a reasonable limit on the length of a compliance schedule within a National Pollutant Discharge Elimination System permit. EPA expects that most continuous dischargers will look to optimize their existing disinfection treatment, and that five years is sufficient time to do so. As discussed in section VIII, EPA believes that experiences from facilities with bacteria effluent limits that are currently meeting the *E. coli* and enterococci criteria, as well as the current fecal coliform criteria, suggest that disinfection processes can be upgraded or adjusted to produce the levels of bacteria necessary for compliance with the rule. EPA has used five years for compliance schedules where permittees were expected to design, construct, and operate new treatment processes, and not just optimize their current treatment. (See 40 CFR 131.38(e)(6) and

40 CFR Part 132, Appendix F, Procedure 9.B.1.)

EPA does not regard the five-year cap on compliance schedules as inconsistent with either EPA's Combined Sewer Overflow Control Policy or Clean Water Act section 402(q). Section 402(q) requires that National Pollutant Discharge Elimination System permits conform to EPA's Combined Sewer Overflow Control Policy published on April 11, 1994 (59 FR 18688). EPA's Combined Sewer Overflow Control Policy recommends that permittees develop a construction and financing schedule for implementation of combined sewer overflow controls (59 FR 18694). The Combined Sewer Overflow Control Policy recommends that permitting (and water quality standards setting) authorities include, in an appropriate enforceable mechanism, compliance dates, on the soonest practicable schedule, for requirements to implement Long Term Control Plans (59 FR 18696). In addition, permits need to include water quality-based effluent limits requiring compliance by no later than the date allowed under the water quality standards that apply. The Combined Sewer Overflow Control Policy itself does not require compliance schedules in water quality standards (or otherwise constrain the authority of water quality standard setting agencies). Finally, the Combined Sewer Overflow Control Policy recommends, in cases where water quality standards do not allow compliance schedules and the permittee cannot, on the effective date of the permit, comply with effluent limitations established in the permit, that the compliance schedule be placed in a judicial order for major permittees (59 FR 18697). EPA recognizes that combined sewer overflow systems often need more than five years to meet the requirements of the Clean Water Act. In these situations, the permitting authority can provide sufficient time for the combined sewer overflow system to comply by using the enforceable mechanisms identified in the Combined Sewer Overflow Control Policy.

Finally, in today's final rule, EPA is making two corrections to the proposed rule at 40 CFR 131.41(f)(3)–(4) to refer to paragraph (c) as the paragraph containing the water quality criteria for bacteria.

V. EPA Review of State and Territorial Standards

A. How Did EPA Decide Which States and Territories To Include in Today's Rule?

EPA evaluated the water quality standards for bacteria for all 35 coastal States and Territories with coastal recreation waters to determine whether the water quality standards for such waters are as protective of human health as the 1986 bacteria criteria document, as required by Clean Water Act section 303(i)(1)(A). If a State's or Territory's approved water quality standards for bacteria for coastal recreation waters are as protective of human health as the 1986 bacteria criteria as of the signature date of today's rule, EPA is not including the State or Territory in the promulgated rule.

EPA described the five considerations used to evaluate the State and Territorial water quality standards in detail in the proposed rule (69 FR 41728–41731). Today, EPA uses the same five considerations to evaluate State and Territorial water quality standards for inclusion in the final rule. The following five sections summarize the considerations.

1. Are the standards based on EPA's recommended indicators of *E. coli* and enterococci as pathogen indicators for freshwaters and enterococci for marine waters?

As discussed in section IV.B.1 of the preamble to today's rule, EPA is promulgating water quality criteria for *E. coli* and enterococci for use as standards for State and Territorial coastal and Great Lakes recreation waters. These are the indicator bacteria for which EPA published criteria in the 1986 bacteria criteria document.

EPA received a number of comments asserting that a fecal coliform water quality criterion of 14/100 ml for the protection of a shellfishing use should generally be as protective of human health as the enterococci criterion of 35/100 ml. Some of these commenters referenced the statement in the 1986 bacteria criteria document that EPA selected the value of the enterococci criterion to be no more protective of human health than the then current fecal coliform criterion of 200/100 ml for recreation protection in support of their argument that if there is equal protection between the 1986 bacteria criteria and a fecal coliform value of 200/100 ml, then a fecal coliform value of 14/100 ml should be even more protective of human health than an enterococci value of 35/100 ml for marine waters. EPA disagrees that this statement in the 1986 bacteria criteria document provides a basis for determining that a fecal coliform criterion of 14/100 ml is ''as protective as'' an enterococci criterion of 35/100 ml. EPA explicitly acknowledged in the 1986 bacteria criteria document that these illness rates for fecal coliform were only approximations, but were the best available estimates. (The fecal coliform criteria were developed long before EPA calculated the corresponding estimated illness rates.) EPA used these estimated illness rates for one purpose: to select illness rates for the enterococci and *E. coli* criteria in marine and fresh waters that would be least likely to cause a change in the stringency of the water quality standards for bacteria. However, that discussion in the 1986 bacteria criteria document must be considered along with the purpose of the 1986 bacteria criteria document: to recommend that States replace their fecal coliform criteria for recreation with enterococci or *E. coli* criteria because studies showed low correlation between fecal coliform densities and illness rates. In EPA's view, it would not be reasonable to rely on the equivocal discussion regarding the after-the-fact approximation of an illness rate for fecal coliform in light of the unequivocal conclusion of the entire document: That the fecal coliform criteria for recreation is not a reliable indicator of illness to swimmers.

One commenter, the Washington Department of Ecology, supplied EPA with recently-collected ambient water monitoring data for both fecal coliform and enterococci, and stated that the data for enterococci and fecal coliform, when compared to each other, show that, in Washington State coastal recreation waters, when fecal coliform concentrations were at 14/100 ml or less (a level substantially below the 200/100 ml level that EPA recommended prior to 1986), the enterococci concentrations were almost always at 35/100 ml or less. The State currently has a fecal coliform criterion of 14/100 ml as a geometric mean and 43/100 ml as a value not to be exceeded more than 10% of the time for its Class AA and A waters, which for marine waters are the only classes with primary recreation uses. The data submitted to EPA are from 37 locations in the King County area of the Puget Sound for the years 1995 through 2004, 155 locations in the Kitsap County area of the Puget Sound and its embayments for early 1997, and 36 locations across the Puget Sound, Strait of Juan de Fuca, and two Pacific Ocean embayments from November 2000 through July 2001.

EPA reviewed the data provided by the Washington Department of Ecology. EPA analyzed the data that were collected from stations located close to shore and within the upper two meters of depth, because these are the areas where people most frequently swim. EPA also excluded data that the State identified as invalid. From these data, there are 3535 samples with both fecal coliform and enterococci bacterial counts. From these samples, EPA calculated 241 summertime geometric means for both fecal coliform and enterococci for the data from King County. EPA could not calculate summertime geometric means for the other locations because there were insufficient data in these data sets to do so.

These geometric mean calculations show that, for King County, the attainment of the State's current fecal coliform geometric mean criterion of 14/100 ml always assures attainment of an enterococci geometric mean of 35/100 ml. Further, there were 67 of 191 relevant occasions (35% of the time) when the State's fecal coliform geometric mean criterion was exceeded but the geometric mean enterococci criterion was not.

The data also show that attainment of the State's current fecal coliform criterion also ensures attainment of the enterococci 75th percentile single sample maximum criterion (04/100 ml) in 99% of the samples collected at all locations in Washington. Of 2194 relevant data points, the State's upper bound fecal coliform criterion of 43/100 ml assures attainment of the Federal enterococci 75th percentile single sample maximum criterion on 2166 occasions. Finally, there were 570 of 2736 relevant occasions (21% of the samples) when use of the State's fecal coliform criterion could be used to close a beach or issue an advisory but the Federal enterococci criterion (expressed as a single sample maximum) would not support closure or an advisory. Based on this analysis, EPA agrees that the data provided by the State of Washington for the Puget Sound, Strait of Juan de Fuca, and the Pacific Ocean embayments shows that use of the State's 14/100 ml fecal coliform criterion is as protective of human health as the 1986 bacteria criteria for the State of Washington.

In the proposed rule, EPA solicited comment on its interpretation that Clean Water Act section 303(i) requires States and Territories to adopt criteria for *E. coli* or enterococci to comply with the provisions of that section. Section 303(i)(1)(A) requires that States and Territories submit criteria ''* * * for the pathogens and pathogen indicators for which the Administrator has published criteria under section 304(a).'' EPA's *Ambient Water Quality Criteria for Bacteria—1986* is considered to be the Clean Water Act section 304(a) criteria referred to in Clean Water Act section 303(i)(1)(A). The *Ambient Water Quality Criteria for Bacteria—1986* strongly recommended the use of *E. coli* and enterococci as pathogen indicators for fresh waters and strongly recommended enterococci for marine waters.

Clean Water Act section 303(i)(2)(A) requires EPA to propose water quality standards regulations for a State ''[i]f a State fails to adopt water quality criteria and standards * * * that *are as protective of human health* as the criteria for pathogens and pathogen indicators for coastal recreation waters published by the Administrator * * * '' (emphasis added). EPA solicited comment on whether section 303(i)(2)(A) could be read to require that EPA need only promulgate for a State or Territory if the State or Territory failed to adopt any criteria (not necessarily *E. coli* or enterococci) that were as protective of human health as EPA's 1986 bacteria criteria. In other words, EPA solicited comment on whether it was required to promulgate *E. coli* or enterococci under section 303(i)(2)(A) in situations where a State or Territory adopted a low fecal coliform criterion for protection of primary contact recreation that was demonstrated to provide protection equal to the protection provided by EPA's 1986 bacteria criteria. EPA has reconsidered its interpretation and believes that there is some ambiguity in section 303(i)(2)(A) and that given this ambiguity that it should interpret section 303(i)(2)(A) as allowing EPA to approve standards based on other indicators provided they are as protective as EPA's 1986 bacteria criteria because this approach is most consistent with the purposes of the Clean Water Act. Thus, EPA is taking the position that EPA is not required to promulgate *E. coli* or enterococci criteria if a State demonstrates that other criteria, based on other bacteria indicators, are as protective of human health as EPA's 1986 bacteria criteria. That is, if a State or Territory adopts criteria, even though they are not for *E. coli* or enterococci, that are demonstrated to be as protective of human health as EPA's 1986 bacteria criteria, section 303(i)(2)(A) does not require EPA to promulgate criteria for *E. coli* or enterococci. Promulgation of criteria for *E. coli* or enterococci in that situation would not provide any greater level of public health protection. Protection of public health was Congress's primary intent in enacting the BEACH Act. Therefore, if a State or Territory can show that in waters in which the State or Territory intends to protect primary contact recreation uses with its criteria for fecal coliform, that such uses will be protected at a level equal to or greater than the protection provided by EPA's 1986 bacteria criteria for enterococci and *E. coli,* EPA does not believe Congress intended EPA to promulgate water quality criteria for pathogens or pathogen indicators for those waters in that State or Territory where this has been demonstrated. The facts presented by the Washington Department of Ecology highlight the reasonableness of this interpretation.

In addition, EPA considers it to be an appropriate exercise of Federal discretion to take this approach with Washington State. Congress intended through Clean Water Act section 303(c) to give States the paramount role in weighing any available credible information for establishing water quality standards that are protective of the designated uses of their waters. Congress maintained this same approach in Clean Water Act section 303(i) by giving States the responsibility to adopt water quality standards for protecting human health, with EPA's role being to promulgate standards for those States that had not adopted standards as protective of human health as the 1986 bacteria criteria. This interpretation is supported by the legislative history of Clean Water Act section 303(i). For example, S. Rep. No. 106–366 states in the section-by-section analysis of the Act:

> These provisions are consistent with the applicable requirements of the Clean Water Act and specifically section 303(c) and the regulations implementing that section. States must incorporate into their water quality standards, water quality criteria for pathogens and pathogen indicators that are at least as protective of human health as criteria EPA publishes under section 304(a). The State's criteria may be as protective as those of EPA without being numerically equivalent. However, if a State adopts criteria differing from those published by EPA, the State has a duty to defend the criteria from a scientific perspective. EPA's approval or disapproval of the criteria is based upon the information provided by the State. (S. Rep. No. 106–366, at 4 (2000)).

EPA believes that this language demonstrates Congress's intent that section 303(i) be interpreted within the broader context of section 303, and that section 303(i) not be interpreted to preclude a State's adopting alternative criteria from those published by EPA

under section 304(a), provided that the State demonstrates (and EPA agrees) that the alternative criteria are as protective of human health as EPA's published criteria.

H. Rep. No. 106–98 has similar language in its section-by-section analysis as follows:

> The Committee intends that the legal standard for determining when a State water quality standard is consistent with the applicable requirements of the Clean Water Act be governed by the existing requirements of section 303(c) of the Clean Water Act, and the regulations implementing that section. This standard has been interpreted to mean that State water quality criteria must be at least as protective of human health as EPA's water quality criteria. Thus, a State must incorporate into its water quality standards water quality criteria for pathogens and pathogen indicators that are at least as protective as criteria that EPA has published under section 304(a), including EPA's 1986 criteria for enterococcus and Escherichia coli. (H. Rep. No. 106–98, at 8 (1999)).

Here again, EPA believes Congress is clarifying its intent that State criteria to be approvable under section 303(i), must be at least as protective as EPA's 1986 bacteria criteria, but not necessarily the same as the 1986 criteria.

With respect to the State of Washington, EPA looked at the process that the State took in reviewing its fecal coliform standards for protecting recreation uses in marine waters. The State did this as part of its triennial review of water quality standards. The State undertook a multi-year process starting in the summer of 1996 and finishing in 2003. In this period, the State convened a multi-stakeholder technical workgroup to examine the technical merits of the State's bacteria criteria, and documented the technical and policy issues evaluated by the work-group and its predecessor (see *http://www.ecy.wa.gov/pubs/0010072.pdf*). The State used this information to focus discussions with numerous advisory panels both internal and external to the Washington Department of Ecology. The State held a formal 60-day public review and comment period on proposed revisions to its water quality standards (including adoption of EPA's recommended enterococci criteria for Class AA and Class A marine waters), and as part of the public notification process, directly mailed out approximately 3320 announcements, 550 email announcements, and 621 CDs to potential interested citizens, regulated businesses, governmental officials, and every city, county, and Tribe in the State. The State conducted eight public workshops and hearings regarding proposed changes to its standards at locations across the State. Finally, the State made all documents available to the public at its Web site at *http://www.ecy.wa.gov/programs/wq/swqs/supporting_docs/supporting_docs.html.*

Based on the input from the various stakeholders in the State and the paired monitoring data for fecal coliform and enterococci, the State concluded that its fecal coliform criteria for marine waters is protective of the recreation use in these waters, and also is at least as protective of human health as EPA's 1986 bacteria criteria. Many stakeholders in Washington share this conclusion, as expressed in the public comments by many stakeholders on the State's proposed water quality standards (see *http://www.ecy.wa.gov/programs/wq/swqs/supporting_docs/public_comments.html*) and comments by a Puget Sound public interest group and a Northern Pacific Ocean shellfish group on EPA's proposed rule. Given this conclusion, the State and some stakeholders were concerned that the State adoption of the enterococci standard and the attendant new monitoring that this would entail would limit the State's ability to monitor as comprehensively for fecal coliform as it does currently and thus provide the maximum assurance that its waters are meeting its protective 14/100 ml fecal coliform standard. However, this rule does not require monitoring.

As discussed previously in this preamble, EPA reviewed the State's data and determined that it shows that the State's fecal coliform criterion is as protective as the 1986 bacteria criteria. Accordingly, EPA considers it appropriate and consistent with Congressional intent to exclude Washington from today's Federal promulgation because the State has fully met its obligations under the Clean Water Act using a full and open public process and is ensuring protection of human health in the coastal recreation waters of Washington.

EPA considers its analysis of the data provided by the State of Washington to only be relevant to the State's waters. EPA does not agree that the Washington data show that use of a fecal coliform criterion of 4/100 ml is as protective of human health as the 1986 bacteria criteria for any other coastal recreation waters in the United States because the conditions of the Washington State waters may differ from waters of other States. The relationship between fecal coliform and enterococci in the data provided by the Washington Department of Ecology is an empirical relationship, and reflects the conditions of the water from which the samples were collected. EPA cannot determine without water-specific data the extent to which the Washington State waters where the samples were collected are representative of other waters in other parts of the United States. The Washington data reflect the pathogen sources in that area, the local rainfall which has an effect on pathogen loadings, the tidal flushing in the waters, and the temperature of the waters. Further, as noted above, the legislative history indicates that any State wishing to adopt criteria other than those in the 1986 bacteria criteria document, ''has a duty to defend the criteria from a scientific perspective'' and specifically to demonstrate that they are as protective of human health as EPA's 1986 bacteria criteria.

No other comments received by EPA included the type and amount of information that EPA views as necessary to demonstrate that fecal coliform criteria (or any other pathogen indicator) in any other State or Territory are as protective of human health as the 1986 bacteria criteria. However, if following promulgation of this rule, some other State or Territory provides data to EPA sufficient to make this demonstration, EPA will approve such other criteria as meeting the requirements of section 303(i) and withdraw today's Federal criteria from that State's coastal recreation waters. EPA cautions, however, that given the focus of the BEACH Act on the specific indicators in EPA's 1986 bacteria criteria document, there is a substantial burden of proof for States wishing to adopt criteria based on alternative indicators. EPA believes that both the process and quantity of information and data provided by Washington State in making this determination may provide guidance to any other State that wished to make a similar showing.

2. Are the Standards for *E. coli* and Enterococci Derived From a Scientifically-Defensible Methodology That Links Them Quantitatively to an Acceptable Risk Level Under Clean Water Act Section 303(i)?

As discussed in section IV.B.2 of the preamble to today's rule, EPA is promulgating water quality criteria that correspond to an illness rate of 0.8% for swimmers in freshwater and 1.9% for swimmers in marine waters. In deciding which States and Territories have already adopted water quality criteria as protective of human health as these criteria, EPA considered an illness rate of 1.0% of swimmers to be as protective as the 1986 bacteria criteria in determining whether to include a State or Territory in the rule. EPA explained

its reasons for this consideration in the proposed rule (69 FR 41724–41725). EPA would consider State or Territorial bacterial criteria for fresh coastal recreation waters to not be as protective of human health if the risk level of the criteria was above 1.0%.

Some commenters addressed this topic. Of these, a majority agreed with EPA that a 1.0% illness rate in swimmers in freshwater is as protective of human health as the 1986 bacteria criteria for different reasons. One commenter said that a 1.0% illness rate would result in only a small increase in risk of illness and that would still be below the risk of illness in marine waters. Another commenter stated that the difference between 0.8% and 1.0% was well within the inherent variability in the criteria. One commenter expressed support for the 1.0% risk level but only if EPA had examined and analyzed all available updated epidemiological data in identifying an acceptable risk level. As explained in the proposal (69 FR 41724–41725), EPA conducted an external peer review of EPA's analysis of the epidemiological data from EPA's bacteriological studies on which the 1986 bacteria criteria document is based.

Of the commenters who did not agree that the 1.0% illness rate was as protective of human health of the 1986 bacteria criteria, most argued that there is no logical reason to allow for different acceptable illness rates in marine and freshwater. One commenter said that the increase from 0.8% to 1.0% in freshwater would increase the incidence of gastrointestinal illness by 25%. Three commenters believed that the illness rate for freshwater should be 0.8%, while one commenter felt that EPA should promulgate additional geometric mean and single sample maximum values relative to other risk levels. EPA disagrees that it should only consider an illness rate of 0.8% to be as protective of human health as the 1986 bacteria criteria document. As explained in the proposal, EPA does not see any a priori reason to require a greater level of protection for freshwaters than for marine waters, which account for the vast majority of swimming days in coastal recreation waters subject to section 303(i) of the Clean Water Act. See the proposed rule (69 FR 41724) for further discussion of EPA's reasoning.

3. Do the Standards Include Appropriate Single Sample Maximums for All Coastal Recreation Waters?

As discussed in sections IV.B.3 and IV.B.4 of the preamble to today's rule, EPA is promulgating water quality criteria that include separate single sample maximums for four categories of waters based on intensity of use, which allows the State or Territory to assign waters to the four use intensity categories. In determining whether existing State or Territorial water quality standards for coastal recreation waters are as protective of human health as EPA's 1986 bacteria criteria, EPA determined whether the water quality standards include a single sample maximum for all coastal recreation waters and if designated bathing beaches have a single sample maximum based on at least the 75% confidence level. EPA considers this approach to be as protective as the 1986 bacteria criteria and also consistent with the criteria as discussed in section IV.B of the preamble to today's rule. EPA included in the rule any State or Territory that does not cover all coastal recreation waters with a single sample maximum and that for designated bathing beaches does not have a single sample maximum based on at least the 75% confidence level. EPA does not expect a State or Territory to use all four of the use categories identified in the criteria document for its standards to be at least as protective as the 1986 bacteria criteria. For example, a State that applied the 75% confidence based maximum to all waters would clearly be as protective as the 1986 bacteria criteria, even though it would only have a single use category.

Most commenters agreed with this approach. Those that disagreed with it commented that the single sample maximum should not be a part of the water quality criteria but rather available for use as an implementation tool for monitoring at beaches. EPA addressed these comments in sections IV.B.3 and IV.B.4 of today's preamble.

EPA notes that all of the 35 coastal and Great Lakes States and Territories have identified coastal recreation waters where there are beaches or similar points of access (*National List of Beaches*, EPA–823–R–04–004, 69 FR 24597, May 4, 2004). Also, all 35 of these States and Territories have received Clean Water Act section 406 grants since 2002 for monitoring and notification of beach advisories or closures at beaches adjacent to coastal recreation waters. Today's rule specifies that the highest use category with a single sample maximum based on the 75% confidence level applies to all beaches meeting the definition of designated bathing beaches in 40 CFR 131.41(b)(2) (''* * * coastal recreation waters that, during the recreation season are heavily-used (based on an evaluation of use within the State) and may have: a lifeguard, bathhouse facilities, or public parking for beach access'') and that the other use categories apply to lower use waters accordingly. Based on the applications for Clean Water Act section 406 grants, EPA expects that many coastal and Great Lakes States will have at least some beaches in the higher use categories.

4. Do the Standards Exempt Fecal Contamination From Non-Human Sources?

For the reasons discussed in section IV.B.7 of the preamble to today's rule, EPA is promulgating the exemption for non-human sources expressed in the 1986 bacteria criteria document. EPA is including in today's rule those States and Territories for which the criteria include exemptions for non-human sources that are inconsistent with the exemption provision in the criteria document, as promulgated in today's final rule. EPA addressed comments on this issue in section IV.B.7 of the preamble to this rule.

5. Has EPA Approved the Standards?

Under section 303(i)(1)(A) of the Clean Water Act, States and Territories must adopt water quality standards as protective of human health as EPA's 1986 bacteria criteria. Moreover, under 40 CFR 131.21, EPA must approve State or Territorial water quality standards adopted after May 30, 2000, in order for those standards to be in effect for Clean Water Act purposes. Therefore, EPA must have approved State and Territorial standards for enterococci or *E. coli* adopted after May 30, 2000, as consistent with Clean Water Act section 303(i) in order for EPA to exclude the State or Territory from the final rule. State and Territorial standards adopted prior to May 30, 2000, that are consistent with Clean Water Act section 303(i) are in effect for Clean Water Act purposes even without explicit EPA approval.

B. Which States and Territories Are Included in Today's Rule?

The proposed rule contains a State-by-State summary of the status of each State or Territory (69 FR 41731–41735). EPA did not include any Tribes in the proposal because although there are Federally-recognized Tribes located next to either coastal or Great Lakes waters, none of those Tribes have coastal recreation waters as defined in 40 CFR 131.41(b)(1). (See 69 FR 41735.)

Today, EPA is promulgating a rule that is identical with respect to the water quality criteria values to what EPA proposed. While there were some changes in other provisions of the rule,

none of these affected EPA's determination with regard to specific States. Therefore, EPA is not excluding any other States from the final rule based on changes in the provisions of the final rule.

Table 4 contains a summary of the status of each of the 35 States and Territories under today's rule. EPA considered three possible reasons for a change in a State's or Territory's status from that described in the proposal: (1) Since the publication of the proposed rule, the State or Territory may have adopted (and EPA approved) water quality standards that are as protective of human health as the 1986 bacteria criteria; (2) the State's or Territory's water quality standards may now be viewed as being as protective of human health in light of EPA's final decision with respect to the application of the single sample maximum in the final rule; and (3) new information submitted following publication of the proposal may have caused EPA to reassess its previous determination. During the period between publication of the proposal and the final rule, four States—Delaware, Hawaii, Maryland, and South Carolina—and the Commonwealth of the Northern Mariana Islands adopted revised water quality criteria for pathogens. In addition, the State of Washington provided information that caused EPA to reassess its determination as to whether the State's fecal coliform criterion of 14/100 ml is as protective of human health as the 1986 bacteria criteria. Below, EPA describes the status of these States and Territory and provides an update on the status of several other States working to adopt water quality standards, as described in the preamble to the proposed rule.

TABLE 4.—CATEGORIZATION OF 35 STATES/TERRITORIES WITH COASTAL RECREATION WATERS

Not subject to 40 CFR 131.41	Subject to 40 CFR 131.41
Alabama	Alaska
American Samoa	California
Connecticut	Florida
Delaware [1]	Georgia
Guam	Hawaii
Indiana	Illinois
Michigan	Louisiana
New Hampshire	Maine
New Jersey	Maryland
Northern Mariana Islands [1]	Massachusetts
South Carolina [1]	Minnesota
Texas	Mississippi
Virginia	New York
Washington [1]	North Carolina
	Ohio
	Oregon
	Pennsylvania
	Puerto Rico
	Rhode Island
	Virgin Islands
	Wisconsin

[1] These States were removed from 40 CFR 131.41 following publication of the proposed rule.

Commonwealth of the Northern Mariana Islands

The Attorney General for the Commonwealth of the Northern Mariana Islands certified the adoption of revisions to their water quality standards on September 30, 2004. These revisions add single sample maximum standards of 104/100 ml for Class AA waters and 276/100 ml for Class A waters in the Commonwealth of the Northern Mariana Islands. Along with the bacteria standards that Commonwealth of the Northern Mariana Islands adopted and EPA approved in 1997, the revised standards will fully satisfy the requirements of the Clean Water Act. On October 28, 2004, EPA approved the revised standards and the Commonwealth of the Northern Mariana Islands is not included in the rule.

Delaware

On September 17, 2004, Delaware submitted to EPA newly adopted criteria for all its coastal recreation waters. The State's criteria specify a geometric mean of 35/100 ml and a single sample maximum of 104/100 ml for enterococci for all primary contact recreation marine waters. Delaware's regulations also limit the application of the criteria when the bacteria comes from wildlife sources. The State has submitted documentation to EPA in support of its source tracking methodology for bacteria, together with epidemiological work on illness rates from bacteria of wildlife origin. The State uses the source information to apply a factor to bacteria from wildlife sources that accounts for illness risk from such bacteria. EPA reviewed the submitted criteria in accordance with this rule and on November 4, 2004, approved the specific numeric criteria as meeting the requirements of both sections 303(c) and 303(i) of the Clean Water Act. EPA is discussing the State's methodology for source tracking with the State and is reviewing it to determine whether it meets the requirements of the Clean Water Act and this rule. Until EPA approves this limitation, for purposes of the Clean Water Act, Delaware's bacteria criteria for primary contact recreation apply to enterococci bacteria regardless of the source. As a result, Delaware is not included in today's rule.

Hawaii

On September 21, 2004, Hawaii adopted bacteria criteria for its coastal estuaries, and a single sample maximum for coastal waters within 300 meters (1000 feet) of the shore. The criteria are for enterococci and have a geometric mean of 33/100 ml and a single sample maximum of 89/100 ml in coastal estuaries. These newly adopted criteria also contain a single sample maximum of 100/100 ml in coastal waters within 300 meters from shore to complement the existing geometric mean for coastal waters. On October 28, 2004, EPA approved these criteria. However, Hawaii still has no numeric criteria protecting State waters beyond 300 meters from shore, although these waters are designated for recreation in the State's water quality standards. Therefore, EPA is including Hawaii in this rule but only for the lack of criteria in State waters beyond 300 meters from shore.

Maryland

On July 5, 2004, Maryland adopted new criteria for all its coastal recreation waters. These criteria specify a geometric mean of 35/100 ml enterococci for all recreation waters and at least a single sample maximum of 104/100 ml for those waters that are designated natural bathing areas under the State regulations. EPA is reviewing these criteria in accordance with this rule and is consulting with the State regarding the intent and meaning of the State regulations. EPA and Maryland have not concluded discussions of the applicability of the State criteria. Because Maryland does not yet have approved criteria, EPA is including Maryland in this rule. If EPA determines that Maryland's standards comply with Clean Water Act 303(i), they will become immediately effective for Clean Water Act purposes, as specified in 40 CFR 131.41(d)(1).

South Carolina

On June 25, 2004, South Carolina adopted criteria for all of its coastal recreation waters consistent with EPA's 1986 bacteria criteria. The criteria are for enterococci and have a geometric mean of 35/100 ml, a single sample

maximum of 104/100 ml for coastal waters designated by South Carolina as Classes SFH (Shellfish Harvesting) and SA, and a single sample maximum of 501/100ml for coastal waters designated by South Carolina as Class SB. However, the South Carolina water quality standard delays the applicability of the enterococci criteria for permit effluent limits until such time that EPA publishes analytical methods for enterococci in effluents. On October 7, 2004, EPA disapproved part of the South Carolina standards and approved the remainder of the standards that pertain to pathogens and pathogen indicators. EPA considers the approved water quality standards to be as protective of human health as EPA's 1986 bacteria criteria, and South Carolina is not included in the rule.

Washington

The Washington Department of Ecology submitted data consisting of paired samples of fecal coliform and enterococci measurements collected in Puget Sound, the Strait of Juan de Fuca, and the Pacific Ocean embayments. The Department of Ecology considers this information as sufficient to demonstrate that use of the State's fecal coliform criterion of 14/100 ml ensures that enterococci concentrations are below the 1986 bacteria criteria, and requested that EPA consider the State's fecal coliform criterion to be as protective of human health as the 1986 bacteria criteria. As discussed in section V.A.1 of the preamble, EPA reviewed these data and has determined that the Washington fecal coliform criterion of 14/100 ml is as protective of human health as the 1986 bacteria criteria. The Washington fecal coliform criterion applies to all marine waters with primary contact recreation use, and thus applies to all coastal recreation waters. Therefore, Washington is not included in the rule.

Maine

EPA is also making a minor change with respect to including Maine in today's final rule. As explained in the preamble to the proposal (69 FR 41733), EPA intended to exclude Maine's Class SA waters from coverage under the rule; however, EPA failed to list Maine's Class SA waters as excluded in the regulatory text of 40 CFR 131.41(e)(2). EPA has corrected this omission in today's final rule.

Other States

EPA identified two other States or Territories that, at the time of proposal, intended to adopt EPA's 1986 bacteria criteria by September 30, 2004. These were Illinois and the Virgin Islands. However, neither Illinois nor the Virgin Islands adopted the criteria and received EPA approval as of the signature of today's rule.

C. Under What Conditions Will States and Territories Be Removed From Today's Rule?

State and Territorial standards for bacteria approved by EPA pursuant to Clean Water Act sections 303(c) and 303(i) will be in effect for Clean Water Act purposes, and the Federal criteria for 40 CFR 131.41 will no longer apply. EPA recognizes that once it approves the water quality standards of the State or Territory, the Code of Federal Regulations will still include a reference to the State in 40 CFR 131.41 until EPA formally withdraws the State or Territory from the Federal rule, and thereby the Code of Federal Regulations. However, the State and Territorial standards for bacteria approved by EPA pursuant to Clean Water Act sections 303(c) and 303(i) will be in effect for Clean Water Act purposes (and not the Federal criteria at 40 CFR 131.41) between the time EPA approves the State standards and formal withdrawal of the State or Territory from the rule.

A State or Territory may adopt and submit partial water quality standards for EPA's review and approval under today's rule. EPA envisions two types of partial water quality standards submittals with different results. If a State adopts and submits water quality standards that meet all the requirements discussed in today's rule but the standards apply only to a portion of the State's coastal recreation waters, EPA expects to approve the State standards for the coastal recreation waters to which they apply, and today's Federal standards would continue to apply to all coastal recreation waters that are not addressed in the submittal. The combination of the approved State and Federal standards serve to meet the requirements of Clean Water Act section 303(i). If a State adopts and submits standards for all of its coastal recreation waters but the standards do not satisfy all of the considerations described in today's rule as necessary for EPA to make a determination that the State standards are as protective of human health as the 1986 bacteria criteria, EPA expects to disapprove the entire submittal and today's Federal standards would continue to apply to the State's coastal recreation waters. For example, a State might adopt water quality standards that contain *only* a geometric mean for marine waters of 35/100 ml for enterococci and not a single sample maximum provision. This would not be sufficient to satisfy section 303(i). EPA anticipates that it would be administratively unworkable to approve State standards in piecemeal fashion and to supplement piecemeal State standards with components of today's rule, as in the example of a State that adopts a State geometric mean but must still retain a Federal single sample maximum for its coastal recreation waters.

VI. Response to Additional Significant Public Comments

EPA has prepared a Comment Response Document, which addresses the comments that EPA received and is included in the docket for today's rule. Below, EPA provides a summary of its responses to four additional categories of significant comments.

A. 1986 Bacteria Criteria

Some commenters raised concerns about EPA's 1986 bacteria criteria. The bulk of the comments questioned the reliability of the studies on which EPA based the criteria. Some remarked that the studies evaluated in the criteria document did not appropriately select test sites because the test sites were all located on the East Coast and therefore may not represent conditions on the West Coast; the test sites had only one source of pollution (human); and no control sites were used. In addition, commenters characterized the data as anecdotal rather than clinical in nature (*e.g.*, blood and stool samples) and suggested that the studies did not ensure that the reported illnesses were due to pathogens relating to bathing in the water. Others questioned EPA's chosen risk levels. One commenter suggested other possible indicators. Others commented on the lack of EPA follow-up epidemiological studies since 1986.

EPA acknowledges these comments, but notes that Clean Water Act section 303(i) requires States and Territories with coastal recreation waters to adopt water quality criteria for bacteria as protective of human health as the criteria published by EPA under Clean Water Act section 304(a). Section 303(i) was added to the Clean Water Act in 2000 by the BEACH Act. At the time the BEACH Act was enacted, the current Clean Water Act section 304(a) criteria were EPA's 1986 bacteria criteria because these are EPA's only currently recommended bacteria criteria for protection of primary contact recreation waters. The legislative history makes it clear that Congress recognized that EPA's 1986 bacteria criteria have flaws, but also that Congress wanted States to adopt standards based on them by April 10, 2004, despite those flaws,

presumably because Congress thought the 1986 bacteria criteria are better than what it characterized as ''outdated'' criteria used by some States. (See H. Rep. No. 106–98, at 6 (1999); see generally S. Rep. No. 106–366 (2000) and H. Rep. No. 106–98.)

EPA had reviewed its original studies supporting its recommended 1986 water quality criteria for bacteria and the literature on human health research conducted since EPA completed the original studies of health effects associated with swimming in marine and freshwater, as discussed on pages 10–13 of the *Implementation Guidance for Ambient Water Quality Criteria for Bacteria* (EPA–823–B–02–003, May 2002 Draft) . Based on these reviews, EPA has confirmed that the 1986 EPA recommended water quality criteria for bacteria are protective of human health against acute gastrointestinal illness.

The epidemiological studies used to develop the criteria were themselves peer reviewed. The marine studies were peer reviewed in the Journal of the American Public Health Association. EPA's Office of Research and Development reviewed the freshwater studies. The Harvard School of Public Health evaluated the epidemiology test protocol for both fresh and marine studies, and the University of Pittsburgh Center for Excellence provided an independent review of the results of the epidemiology studies. Finally, the 1986 bacteria criteria were reviewed by the public when EPA published a **Federal Register** notice concerning the criteria (49 FR 21987, May 24, 1984).

While Congress directed in Clean Water Act section 303(i) that, by April 9, 2004, States and Territories adopt criteria as protective as EPA's current criteria, Congress also recognized that ''EPA's 1986 criteria need to be updated to improve the scientific basis for identifying pathogens in coastal waters.'' S. Rep. No. 106–366, at 2. To address this concern, Congress amended Clean Water Act section 304(a) to require EPA to ''publish [within five years of enactment of the BEACH Act] new or revised water quality criteria for pathogens and pathogen indicators (including a revised list of testing methods, as appropriate), based on the results of the studies conducted * * * for the purpose of protecting human health in coastal recreation waters.'' See Clean Water Act section 304(a)(9). Thus, while Congress recognized that the 1986 bacteria criteria need improvement, Congress still required States and Territories to adopt water quality standards as protective of human health as the 1986 bacteria criteria. EPA is currently conducting epidemiological studies on potential health risks resulting from exposure to pathogens or pathogen indicators in coastal recreation waters, as required under this section of the Clean Water Act. Once EPA publishes these new criteria, EPA expects that States and Territories will begin to adopt water quality standards as protective of human health as the new criteria for coastal and Great Lakes recreation waters, as required by Clean Water Act section 303(i)(1)(B).

B. Economics

Some commenters noted that, if the rule imposes single sample maximums as ''not-to-be-exceeded'' values, the geometric mean component of the criteria would be significantly different from the geometric mean values in most State current fecal coliform bacteria criteria for recreation. For fecal coliform criteria to protect recreational uses, most State criteria include a geometric mean value and a threshold value not to be exceeded in more than 10% of the samples. Some commenters state that there will be a substantial cost difference to regulated entities if the rule imposes single sample maximums for *E. coli* or enterococci as ''not-to-be exceeded'' values, noting that EPA's economic analysis in the proposal does not address the cost of controlling discharges from combined sewer overflows, sanitary sewer overflows, and municipal separate storm sewer systems to meet such single sample maximums, and that EPA's cost estimates for controlling these sources in other regulatory and policy actions are not based on a single sample maximum as a never-to-be exceeded criterion for Clean Water Act purposes.

Today's rule does not treat single sample maximums as a requirement that may never be exceeded in all instances. Single sample maximums are values that indicate, with a certain degree of confidence, that a waterbody may exceed the geometric mean. The State can collect additional data on a receiving water if it believes that the violation of the single sample maximum does not indicate violation of the geometric mean, as described in the preamble to today's rule.

For its economic analysis, EPA evaluated the potential controls for publicly owned treatment plants and industrial facilities likely to discharge bacteria to meet permit limits based on the single sample maximums as never-to-be exceeded values to provide a conservatively high estimate of cost. In reality, States and Territories have flexibility in implementing the criteria in National Pollutant Discharge Elimination System permits. EPA also assumed that none of the States covered by the rule had adopted *E. coli* or enterococci as the applicable water quality standard whereas several of the States in today's rule have water quality standards for *E. coli* or enterococci already in place for some of their coastal recreation waters. This also led to a higher estimate of cost than may actually be incurred. EPA addresses discharges of bacteria from municipal separate storm sewers, combined sewer overflows, sanitary sewer overflows, and nonpoint sources (*e.g.*, agriculture) to coastal waters in existing regulations and policies, and has tallied potential control costs to comply with those regulations and policies as part of analyses for those actions. In general, the best management practices or treatment controls for wet weather discharges that are designed to meet fecal coliform standards in a waterbody are also the best management practices or treatment controls used to address *E. coli* and enterococci. Because of the substantial variability in bacterial indicators and the site-specific effectiveness of control measures, EPA is not able to determine at this time if additional measures will ultimately be necessary to meet criteria based on the new indicators. Compliance with pathogen standards is best achieved through an adaptive management approach based on cost-effective management practices and control measures coupled with on-going monitoring and revision of control plans as necessary.

C. Analytical Methods

EPA received a few comments on the topic of analytical methods. One commenter expressed concern that EPA has not published EPA-approved analytical methods for measuring enterococci and *E. coli* in effluent. EPA recognizes that it has not yet published analytical methods for measuring enterococci and *E. coli* in effluents. EPA published its methods for measuring enterococci and *E. coli* in ambient waters on July 21, 2003, and is now in the process of proposing methods for measuring these pathogen indicators in effluent. EPA has completed its inter-laboratory study of method 1600 for enterococci and method 1603 for *E. coli* in secondary treated effluents, and has determined that the variability found in this study support publication of a proposed method for effluents. EPA is moving expeditiously to promulgate these methods.

Three commenters noted that the inter-laboratory study for enterococci and *E. coli* methods discussed above did not address pulp and paper effluents,

and that these effluents are suspected of containing *E. coli* and enterococci independent of fecal matter. As a result, the commenters suggest that EPA complete validation studies of enterococci and *E. coli* methods for pulp and paper effluents before requiring States to implement the criteria in National Pollutant Discharge Elimination System permits for pulp and paper facilities. EPA disagrees that it must complete additional validation studies before States use the criteria for permits. EPA has completed its inter-laboratory validation for EPA Methods 1600 and 1603 for effluents, and is in the process of proposing these methods. In addition, EPA is currently completing its inter-laboratory validation for EPA Methods 1103.1 and 1106.1 in effluents, and intends to propose them after the validation process is completed. EPA did not specifically use pulp and paper effluent matrices in the study. EPA method validation studies typically include several representative matrices and are not intended to include every potential effluent matrix to which a method may be applicable. In addition, EPA notes that its National Pollutant Discharge Elimination System regulations do not require that compliance monitoring for National Pollutant Discharge Elimination System permits be based on EPA-approved methods. 40 CFR 122.41(j)(4) provides that monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit. States implementing the criteria in National Pollutant Discharge Elimination System permits may thus specify some other analytical method that the permittee is to use for compliance monitoring. Of course, any such method must be scientifically defensible, which usually means that it has been tested and verified by some other recognized standard setting or method development body. Permittees who believe that a particular method is not appropriate or reliable for their effluent may present documentation of this concern to the permitting authority for consideration in determining compliance monitoring requirements.

D. Effective Date

Section 553 of the Administrative Procedure Act provides that a substantive rule shall be published not less than 30 days before its effective date, except under certain circumstances. EPA is promulgating today's rule with an effective date of 30 days after publication in the **Federal Register** in order to make the water quality criteria effective as soon as possible and available for use in assessing beach safety and for other Clean Water Act purposes. This will serve to protect human health at coastal recreation waters.

EPA received two comments on this issue. One commenter requested that EPA delay promulgating the rule until July 2005 and another commenter suggested that EPA delay the effective date for 90 days so that a State could complete its own promulgation of water quality standards based on the 1986 bacteria criteria. EPA disagrees that it should allow more than 30 days because this would delay the time at which States and Territories will begin using today's water quality criteria to govern decisions about opening and closing beaches and for other Clean Water Act purposes. EPA understands the interest of the commenters in having their State standards serve as the effective standards for Clean Water Act purposes. If a State adopts, and EPA approves, standards satisfying Clean Water Act section 303(i) shortly after the effective date of this rule, the State criteria will immediately replace the criteria in today's rule for Clean Water Act purposes within the State, consistent with 40 CFR 131.41(d)(i). EPA does not expect that a short window during which Federal standards are in effect will unduly disrupt on-going State water quality standards programs. Therefore, EPA is making the rule effective 30 days after publication in the **Federal Register**.

VII. Alternative Regulatory Approaches and Implementation Mechanisms

States and Territories have considerable discretion in designating uses. A State or Territory may find that changes in use designations are warranted. EPA will review any new or revised use designations adopted by States or Territories for coastal recreation waters covered by this rule to determine if the standards meet the requirements of the Clean Water Act and implementing regulations. In adopting recreation uses, the States and Territories may wish to consider additional categories of recreation uses. If States and Territories change the designated use of a waterbody consistent with Clean Water Act section 303(c) and the regulations at 40 CFR Part 131, such that they are no longer designated for swimming, bathing, surfing, or similar water contact activities, then the waterbody would not be covered by the Clean Water Act definition of ''coastal recreation waters'' or this rule.

EPA reminds the States and Territories that they must conduct use attainability analyses as required by 40 CFR 131.10(g) when adopting water quality standards that do not include the uses specified in Clean Water Act section 101(a)(2) or with subcategories of the designated uses specified in Clean Water Act section 101(a)(2) that require less stringent criteria (see 40 CFR 131.10(j)), than those currently in effect.

VIII. Economic Analysis

These water quality standards may serve as a basis for development of National Pollutant Discharge Elimination System permit limits. Many of the affected jurisdictions (*i.e.*, States and Territories) are the National Pollutant Discharge Elimination System permitting authorities, which retain considerable discretion in implementing standards. EPA evaluated the potential costs to National Pollutant Discharge Elimination System dischargers in affected jurisdictions associated with State and Territorial implementation of today's standards. This analysis is documented in '''Economic Analysis for Final Water Quality Standards for Coastal Recreation Waters,''' which can be found in the record for this rulemaking.

Any National Pollutant Discharge Elimination System-permitted facility that discharges to waterbodies affected by this rule could potentially incur compliance costs. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs) discharging sanitary wastewater to surface waters (*i.e.*, point sources). In addition, EPA addresses discharges of bacteria from municipal separate storm sewer systems, combined sewer overflows, and sanitary sewer overflows to coastal waters in existing regulations and policies, and has tallied potential control costs as part of the analyses for those actions. EPA expects that States and municipalities will continue to use the same types of controls to come into compliance with the revised criteria as are currently used for compliance with existing regulations and policies. Available evidence suggests that if discharges are controlled in such a way that fecal coliform criteria are met, it is likely that enterococci and *E. coli* criteria would also be met, and there would not be an increase in impaired waters, resulting in additional Total Maximum Daily Loads, though not enough is known about the relationship between sources, controls, and the various indicators to conclude this with any certainty at this time. EPA did not evaluate the costs of this rule to Concentrated Animal Feeding

Operations because the regulations for Concentrated Animal Feeding Operations prohibit discharges except in unusual circumstances (*i.e.*, very large storms) and therefore those entities are unlikely to incur any additional costs as a result of today's rule. EPA did not evaluate the potential for costs to nonpoint sources, such as agricultural runoff. Finally, EPA did not attempt to quantify the potential benefits of the rule.

EPA recognizes that a State or Territory may decide to require controls for nonpoint sources (*e.g.*, agricultural runoff). However, it is difficult to model and evaluate the potential costs impacts of this rule to those sources because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which EPA evaluates under critical low flow or drought conditions. Also, data on instream and discharge levels of bacteria after States have implemented controls to meet current water quality standards based on fecal coliform are not available. Therefore, trying to determine which sources would not achieve standards based on *E. coli* or enterococci after complying with existing regulations and policies may not be possible, and would be extremely time and resource intensive. Finally, it is likely that controls needed to meet existing criteria (assumed for the purpose of costing to be fecal coliform for all States covered by the rule) would also address water quality problems indicated by criteria for *E. coli* or enterococci.

A. Identifying Affected Facilities

EPA identified approximately 734 point source facilities that may be affected by the rule. Of these potentially affected facilities, 306 are classified as major dischargers, and 428 are minor dischargers. EPA did not include general permit facilities in its analysis because data for such facilities are extremely limited, and flows are usually negligible. Furthermore, EPA could not determine if any of these facilities with general permits actually discharge to the affected water bodies because facility location information is not available in EPA's Permit Compliance System database.

Of the facilities located in jurisdictions included in the rule, EPA evaluated that subset of facilities with individual permits that discharge within two miles of coastal waters or the Great Lakes. EPA identified these facilities by relating facility information to the potentially affected waters using Geographic Information System software. EPA also assumed that only wastewater treatment plants or facilities with similar effluent characteristics (*i.e.,* facilities having the potential to discharge bacteria in the form of fecal matter) may be affected. For those facilities for which latitude/longitude data are not included in the Permit Compliance System, EPA included only facilities for which the receiving waterbody name in the Permit Compliance System indicates a coastal water (*e.g.*, Pacific Ocean, Lake Erie). Table 5 summarizes these potentially affected facilities by type and category.

TABLE 5.—POTENTIALLY AFFECTED FACILITIES [1]

Category	Number of Facilities			Total
	Major [2]	Minor		
		Municipal	Other [3]	
Coastal	242	233	100	575
Great Lakes	64	75	20	159
Total	306	308	120	734

[1] Facilities from States and Territories included in the rule that discharge within two miles of coastal waters or the Great Lakes.

[2] No major industrial facilities are affected by the rule. However, 4 other facilities (SIC codes 9711 and 9999) are included because their names indicate that they are wastewater treatment plants.

[3] Includes the following standard industrial classifications: eating places (5812), drinking places (5813), operators of nonresidential buildings (6512), operators of apartment buildings (6513), operators of dwellings other than apartment buildings (6514), operators of residential mobile home sites (6515), hotels and motels (7011), recreational vehicle parks and campsites (7033), organization hotels and lodging houses (7041), physical fitness facilities (7991), amusement and recreation services (7999), skilled nursing care facilities (8051), general medical and surgical hospitals (8062), elementary and secondary schools (8211), colleges, universities, and professional schools (8221), civic, social, and fraternal associations (8641), private households (8811). Also includes the following SICs if the facility name suggests that they may discharge sanitary waste: operative builders (1531), sanitary services, not elsewhere classified (4959), real estate agents and managers (6531), business associations (8611), religious organizations (8661), services not elsewhere classified (8999), air and water resource and solid waste management (9511), national security (9711), and nonclassifiable establishments (9999).

B. Method for Estimating Potential Compliance Costs

To estimate costs, EPA evaluated the 15 major municipal facilities with design flows greater than 120 mgd, thus ensuring that the facilities with the potential for the largest costs would be evaluated. For the remaining facilities, EPA evaluated a sample of facilities to represent discharger type and category.

The Permit Compliance System does not contain *E. coli* or enterococci effluent data for any of the sample facilities. Therefore, to evaluate potential costs associated with the *E. coli* criteria, EPA assumed that 100% of the fecal coliform measured at the sample facilities is *E. coli* because *E. coli* is a type of fecal coliform. EPA assumed that all potentially affected facilities need effluent limits that are required to meet both the applicable geometric mean and single sample maximum values promulgated in today's rule. Based on the last 3 years of data, EPA thus estimated that facilities with average monthly effluent levels exceeding a geometric mean of 126/100 ml, or maximum daily levels exceeding 235/100 ml, would most likely need treatment controls to meet potential permit limits based on today's rule.

Enterococci are fecal bacteria in the fecal streptococcus group, and their relationship to fecal coliform bacteria is uncertain. Therefore, for coastal facilities, EPA used data and information in the literature regarding the ratio of fecal coliform to enterococci in untreated sewage, and the inactivation of both of these bacteria at minimum disinfection levels, to identify the concentrations of fecal coliform (as related to enterococci) that may indicate a need for controls. Data in the literature indicate that the ratio of fecal coliform to fecal streptococcus in untreated sewage ranges from about 4 to 28. EPA

used the most conservative (*i.e.,* erring on the side of overestimating costs) ratio of 4 (*i.e.,* fecal coliform levels are 4 times fecal streptococcus levels) to estimate the fecal coliform levels at which facilities would need treatment to comply with the enterococci criteria. A ratio of 4 translates to fecal coliform levels of 140 fecal coliform per 100 ml (4 * 35 = 140/100 ml); however, for consistency with the Great Lakes analysis, EPA estimated costs based on meeting a more stringent value of 126 fecal coliform per 100 ml. In addition, EPA assumed that coastal facilities with maximum fecal coliform effluent values exceeding 235 colonies per 100 ml would need treatment controls (even though 235/4 = 59, which is more stringent than the single sample maximum value of 104 in the final rule).

Experiences from four facilities currently having effluent limitations to meet *E. coli* and enterococci criteria, as well as the current fecal coliform criteria, suggest that chlorination processes can be upgraded or adjusted to treat the levels of bacteria necessary for compliance with effluent limitations based on today's rule. Therefore, EPA estimated that optimization of existing disinfection processes would enable the sample facilities to comply with the rule. Process optimization usually involves process analysis and process modifications, and EPA's cost estimates include both capital and operating and maintenance costs.

C. Results

Based on the results for the 15 facilities with flows greater than 120 mgd, and extrapolating the sample results to the remaining potentially affected facilities, EPA estimated a total annual cost of approximately $20 million ($13 million for coastal facilities, and $7 million for Great Lakes facilities). EPA estimates that approximately 70 major and 20 minor permittees could incur control costs as a result of permit modifications to include limits based on the criteria in today's rule.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). It does not include any information collection, reporting, or record-keeping requirements.

Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. As discussed below, these water quality standards do not directly apply to any discharger, including small entities.

Clean Water Act section 303(i)(2)(A) requires that if a State or Territory fails to adopt water quality criteria and standards in accordance with paragraph (1)(A) that are as protective of human health as the criteria for pathogen indicators for coastal recreation waters published by the Administrator, the Administrator shall promptly propose regulations for the State or Territory setting forth revised or new water quality standards for pathogen indicators described in paragraph (1)(A) for coastal recreation waters of the State or Territory. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System program, which limits discharges to navigable waters except in compliance with a National Pollutant Discharge Elimination System permit. The Clean Water Act requires that all National Pollutant Discharge Elimination System permits include any limits on discharges that are necessary to meet applicable water quality standards.

In cases in which a discharger (including a small entity) is discharging pathogens into waters subject to these standards, the permitting authority will

need to determine whether the discharge is or may be discharged at a level which will cause, contribute to, or have the reasonable potential to cause an exceedance of the applicable water quality standard. In making that determination, the permitting authority would need to consider the factors listed in 40 CFR 122.44(d)(1)(ii). Whether a permitting authority will need to require a water quality-based effluent limit depends on the analysis of these factors, which will vary based on the specific facts of each permit decision. Based on that analysis, if the permitting authority finds that the discharger causes, contributes to, or has the reasonable potential to cause an exceedance of the applicable water quality standard, after the application of any required technology-based effluent limits, then the permitting authority will need to impose a water quality-based effluent limit to meet the applicable water quality standard. (See Clean Water Act section 301(b)(1)(C); 40 CFR 122.44(d).) Therefore, as a practical matter, today's rule may or may not necessitate a change in the permit, depending on the specific circumstances. While the Clean Water Act and its implementing regulations may trigger the need for new or revised discharge limits based on the water quality standards in today's rule to be placed on small entities in some cases, the standards themselves do not directly apply to any discharger, including small entities.

In the ''Economic Analysis for Final Water Quality Standards for Coastal Recreation Waters,'' EPA presents an analysis which supports a conclusion that today's rule will likely affect only a few small entities. (See the docket for today's rule.)

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. The definition of ''State'' for the purposes of the Unfunded Mandates Reform Act includes ''a territory or possession of the United States.'' Under section 202 of the Unfunded Mandates Reform Act, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the Unfunded Mandates Reform Act generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the Unfunded Mandates Reform Act a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act) that may result in expenditures to State, local and Tribal governments, or the private sector, in the aggregate of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this rule is not subject to the requirements of section 203 of the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA's authority and responsibility to promulgate Federal water quality standards when State standards do not meet the requirements of the Clean Water Act is well established and has been used on various occasions in the past. The final rule does not substantially affect the relationship of EPA and the States and Territories, or the distribution of power or responsibilities between EPA and the various levels of government. The final rule does not alter the States' or Territories' considerable discretion in implementing these water quality standards. Further, this rule does not preclude the States and Territories from adopting water quality standards that meet the requirements of the Clean Water Act, either before or after promulgation of the final rule, thus eliminating the need for Federal standards. Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, in the spirit of Executive Order 13132 and consistent with EPA's policy to promote communication between EPA and State and local governments, EPA did consult with representatives of the States and Territories subject to Clean Water Act section 303(i) in developing this rule. Prior to this rulemaking action, EPA had numerous phone calls, meetings and exchanges of written correspondence with the States to discuss EPA's concerns with the States' bacteria criteria, compliance with the BEACH Act, and the Federal rulemaking process. In June 2000, EPA and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) established a State/EPA Work Group on Water Quality Standards, composed of selected senior State and EPA managers, to provide input to EPA on water quality standards issues. The group has met approximately three times per year since then, beginning with a meeting in September 2000. At every meeting the group has discussed the scientific, programmatic, and policy aspects of bacteria criteria for both coastal and non-coastal recreation waters, and has provided useful input to EPA on these topics. Members of this group, together with other interested State participants, have also served as an ad-hoc work

group since 2001 to assist EPA in developing draft detailed scientific and policy guidance (*Implementation Guidance for Ambient Water Quality Criteria for Bacteria* (EPA–823–B–02–003, May 2002 Draft)) concerning adoption and implementation of EPA's recommended criteria for bacteria. Today's final rule reflects State and Territorial input, and EPA has responded to State and Territorial comment on various topics in the preamble to today's rule and in the Comment Response Document, which is part of the record for this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. There are four authorized Indian Tribes with coastal or Great Lakes waters; however, they have not yet adopted water quality standards, and therefore, have no designated coastal recreation waters within their jurisdiction. These Tribes are therefore not subject to today's rule. Thus, Executive Order 13175 does not apply to this rule.

EPA has contacted those Tribes identified as having coastal or Great Lakes waters to inform them of the potential future impact this could have on Tribal waters.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As explained in section II.B of the preamble to today's rule, EPA developed the water quality criteria promulgated in today's rule based on concentrations of *E. coli* and enterococci from EPA-sponsored epidemiological studies reflecting all reported illnesses, including those of children. In the marine and freshwater studies, the range of the number of children under age 10 was between 15% and 25% of the total study population. Children in the age range 10 to 19 years old made up a slightly higher percentage of the study population. During the studies, information on gastroenteritis, respiratory symptoms, and other symptoms were collected for all participants, including children. EPA designed the 1986 bacteria criteria to protect all age groups.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA estimates that compliance with the final rule will create a negligible increase in nationwide energy consumption for point source facilities discharging to coastal recreation waters in affected States. In section VIII, EPA presented its estimated incremental costs to permitted facilities as a result of the final rule. Some of these costs include energy use associated with increased maintenance of disinfection tanks. EPA estimates that the increased energy use from these activities would be about 99,000 kilowatt hours. Net production by electric power generation facilities in the United States in 2002 was 3,858,452 million kilowatt hours (Energy Information Administration, Department of Energy, *http://www.eia.doe.gov/neic/quickfacts/quickelectric.htm).* EPA estimates that the additional energy requirements of EPA's rule are insignificant (*i.e.*, 0.000003% of national energy generation).

I. National Technology Transfer and Advancement Act

As noted in the proposal, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

While ambient water quality criteria may be considered technical standards, EPA is not aware of any voluntary consensus standards relating to bacteria criteria to protect human health and none were brought to our attention in comments on the proposed rule. Furthermore, even if there were such voluntary consensus standards, the BEACH Act specifically directs EPA to promulgate Federal standards based on its own bacteria criteria, in accordance with Clean Water Act section 304(a), in cases where States fail to do so. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 16, 2004.

List of Subjects in 40 CFR Part 131

Environmental protection, Intergovernmental relations, Reporting

and recordkeeping requirements, Water pollution control.

Dated: November 8, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

■ 2. Section 131.41 is added to Subpart D to read as follows:

§ 131.41 Bacteriological criteria for those states not complying with Clean Water Act section 303(i)(1)(A).

(a) *Scope.* This section is a promulgation of the Clean Water Act section 304(a) criteria for bacteria for coastal recreation waters in specific States. It is not a general promulgation of the Clean Water Act section 304(a) criteria for bacteria. This section also contains a compliance schedule provision.

(b) *Definitions.* (1) *Coastal Recreation Waters* are the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under section 303(c) of the Clean Water Act for use for swimming, bathing, surfing, or similar water contact activities. Coastal recreation waters do not include inland waters or waters upstream from the mouth of a river or stream having an unimpaired natural connection with the open sea.

(2) *Designated bathing beach waters* are those coastal recreation waters that, during the recreation season, are heavily-used (based upon an evaluation of use within the State) and may have: a lifeguard, bathhouse facilities, or public parking for beach access. States may include any other waters in this category even if the waters do not meet these criteria.

(3) *Moderate use coastal recreation waters* are those coastal recreation waters that are not designated bathing beach waters but typically, during the recreation season, are used by at least half of the number of people as at typical designated bathing beach waters within the State. States may also include light use or infrequent use coastal recreation waters in this category.

(4) *Light use coastal recreation waters* are those coastal recreation waters that are not designated bathing beach waters but typically, during the recreation season, are used by less than half of the number of people as at typical designated bathing beach waters within the State, but are more than infrequently used. States may also include infrequent use coastal recreation waters in this category.

(5) *Infrequent use coastal recreation waters* are those coastal recreation waters that are rarely or occasionally used.

(6) *New pathogen discharger* for the purposes of this section means any building, structure, facility, or installation from which there is or may be a discharge of pathogens, the construction of which commenced on or after December 16, 2004. It does not include relocation of existing combined sewer overflow outfalls.

(7) *Existing pathogen discharger* for the purposes of this section means any discharger that is not a new pathogen discharger.

(c) *EPA's section 304(a) ambient water quality criteria for bacteria.*

(1) Freshwaters:

A Indicator[d]	B Geometric mean	C Single sample maximum (per 100 ml)			
		C1 Designated bathing beach (75% confidence level)	C2 Moderate use costal recreation waters (82% confidence level)	C3 Light use coastal recreation waters (90% confidence level)	C4 Infrequent use coastal recreation waters (95% confidence level)
E. coli[e]	126/100 ml[a]	[b]235	[b]298	[b]409	[b]575
Enterococci[e]	33/100 ml[c]	[b]61	[b]78	[b]107	[b]151

Footnotes to table in paragraph (c)(1):

a. This value is for use with analytical methods 1103.1, 1603, or 1604 or any equivalent method that measures viable bacteria.

b. Calculated using the following: single sample maximum = geometric mean * 10∧(confidence level factor * log standard deviation), where the confidence level factor is: 75%: 0.68; 82%: 0.94; 90%: 1.28; 95%: 1.65. The log standard deviation from EPA's epidemiological studies is 0.4.

c. This value is for use with analytical methods 1106.1 or 1600 or any equivalent method that measures viable bacteria.

d. The State may determine which of these indicators applies to its freshwater coastal recreation waters. Until a State makes that determination, *E. coli* will be the applicable indicator.

e. These values apply to *E. coli* or enterococci regardless of origin unless a sanitary survey shows that sources of the indicator bacteria are non-human and an epidemiological study shows that the indicator densities are not indicative of a human health risk.

(2) Marine waters:

A Indicator	B Geometric mean	C Single sample maximum (per 100 ml)			
		C1 Designated bathing beach (75% confidence level)	C2 Moderate use coastal recreation waters (82% confidence level)	C3 Light use coastal recreation waters (90% confidence level)	C4 Infrequent use coastal recreation waters (95% confidence level)
Enterococci[c]	35/100 ml[a]	[b]104	[b]158	[b]276	[b]501

Footnotes to table in paragraph (c)(2):

a. This value is for use with analytical methods 1106.1 or 1600 or any equivalent method that measures viable bacteria.

b. Calculated using the following: single sample maximum = geometric mean * 10∧(confidence level factor * log standard deviation), where the confidence level factor is: 75%: 0.68; 82%: 0.94; 90%: 1.28; 95%: 1.65. The log standard deviation from EPA's epidemiological studies is 0.7.

c. These values apply to enterococci regardless of origin unless a sanitary survey shows that sources of the indicator bacteria are non-human and an epidemiological study shows that the indicator densities are not indicative of a human health risk.

(3) As an alternative to the single sample maximum in paragraph (c)(1) or (c)(2) of this section, States may use a site-specific log standard deviation to calculate a single sample maximum for individual coastal recreation waters, but must use at least 30 samples from a single recreation season to do so.

(d) *Applicability.* (1) The criteria in paragraph (c) of this section apply to the coastal recreation waters of the States identified in paragraph (e) of this section and apply concurrently with any ambient recreational water criteria adopted by the State, except for those coastal recreation waters where State regulations determined by EPA to meet the requirements of Clean Water Act section 303(i) apply, in which case the State's criteria for those coastal recreation waters will apply and not the criteria in paragraph (c) of this section.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are other Federally-adopted and State-adopted numeric criteria when applied to the same use classifications.

(e) *Applicability to specific jurisdictions.* (1) The criteria in paragraph (c)(1) of this section apply to fresh coastal recreation waters of the following States: Illinois, Minnesota, New York, Ohio, Pennsylvania, Wisconsin.

(2) The criteria in paragraph (c)(2) of this section apply to marine coastal recreation waters of the following States: Alaska, California (except for coastal recreation waters within the jurisdiction of Regional Board 4), Florida, Georgia, Hawaii (except for coastal recreation waters within 300 meters of the shoreline), Louisiana, Maine (except for SA waters and SB and SC waters with human sources of fecal contamination), Maryland, Massachusetts, Mississippi, New York, North Carolina, Oregon, Puerto Rico (except for waters classified by Puerto Rico as intensely used for primary contact recreation and for those waters included in § 131.40), Rhode Island, United States Virgin Islands.

(f) *Schedules of compliance.* (1) This paragraph (f) applies to any State that does not have a regulation in effect for Clean Water Act purposes that authorizes compliance schedules for National Pollutant Discharge Elimination System permit limitations needed to meet the criteria in paragraph (c) of this section. All dischargers shall promptly comply with any new or more restrictive water quality-based effluent limitations based on the water quality criteria set forth in this section.

(2) When a permit issued on or after December 16, 2004, to a new pathogen discharger as defined in paragraph (b) of this section contains water quality-based effluent limitations based on water quality criteria set forth in paragraph (c) of this section, the permittee shall comply with such water quality-based effluent limitations upon the commencement of the discharge.

(3) Where an existing pathogen discharger reasonably believes that it will be infeasible to comply immediately with a new or more restrictive water quality-based effluent limitations based on the water quality criteria set forth in paragraph (c) of this section, the discharger may request approval from the permit issuing authority for a schedule of compliance.

(4) A compliance schedule for an existing pathogen discharger shall require compliance with water quality-based effluent limitations based on water quality criteria set forth in paragraph (c) of this section as soon as possible, taking into account the discharger's ability to achieve compliance with such water quality-based effluent limitations.

(5) If the schedule of compliance for an existing pathogen discharger exceeds one year from the date of permit issuance, reissuance or modification, the schedule shall set forth interim requirements and dates for their achievement. The period between dates of completion for each requirement may not exceed one year.

If the time necessary for completion of any requirement is more than one year and the requirement is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of interim requirements.

(6) In no event shall the permit issuing authority approve a schedule of compliance for an existing pathogen discharge which exceeds five years from the date of permit issuance, reissuance, or modification, whichever is sooner.

(7) If a schedule of compliance exceeds the term of a permit, interim permit limits effective during the permit shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The administrative record for the permit shall reflect final permit limits and final compliance dates. Final compliance dates for final permit limits, which do not occur during the term of the permit, must occur within five years from the date of issuance, reissuance or modification of the permit which initiates the compliance schedule.

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Tuesday,
November 16, 2004

Part III

Department of Labor

Employment Standards Administration

Office of Federal Contract Compliance Programs; Interpreting Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination; Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination; Notices

DEPARTMENT OF LABOR

Employment Standards Administration

Office of Federal Contract Compliance Programs; Interpreting Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination, Notice

AGENCY: Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor.

ACTION: Notice of proposed standards for systemic compensation discrimination under Executive Order 11246; request for comments.

SUMMARY: The Office of Federal Contract Compliance Programs requests comments on proposed standards for systemic compensation discrimination under Executive Order 11246.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be postmarked by December 16, 2004.

Facsimile: Your comments must be sent by December 16, 2004.

ADDRESSES: Comments should be submitted to Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP. Electronic mail is the preferred method for submittal of comments. Comments by electronic mail must be clearly identified as pertaining to the notice interpreting nondiscrimination requirements of Executive Order 11246 with respect to systemic compensation discrimination, and sent to *ofccp-public@dol.gov.* As a convenience to commenters, public comments transmitted by facsimile (FAX) machine will be accepted. The telephone number of the FAX receiver is (202) 693–1304. To assure access to the FAX equipment, only public comments of six or fewer pages will be accepted via FAX transmittal. Where necessary, hard copies of comments, clearly identified as pertaining to the notice of proposed standards and methodologies for evaluating contractors' and subcontractors' compensation practices, may also be delivered to Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Because of delays in mail delivery, OFCCP suggests that commenters planning to submit comments via U.S. Mail place those comments in the mail well before the deadline by which comments must be received. Receipt of submissions will not be acknowledged, except that the sender may request confirmation of receipt by calling OFCCP at (202) 693–0102 (voice), or (202) 693–1308 (TTY).

FOR FURTHER INFORMATION CONTACT: Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0102 (voice), or (202) 693–1308 (TTY). Copies of this notice in alternative formats may be obtained by calling (202) 693–0102 (voice), or (202) 693–1308 (TTY). The alternative formats available are large print, electronic file on computer disk, and audiotape. The Notice is available on the Internet at *http://www.dol.gov/esa.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. OFCCP Compliance Reviews Focus on Systemic Compensation Discrimination

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, which prohibits covered federal contractors and subcontractors from making employment decisions on the basis of race, color, national origin, religion, or sex.[1]

OFCCP conducts compliance reviews to determine whether covered contractors have been engaging in workplace discrimination prohibited by E.O. 11246. As part of its compliance review process, OFCCP investigates whether contractors' pay practices are discriminatory.

OFCCP compliance reviews typically produce cases that involve allegations of systemic discrimination, not discrimination against a particular individual employee. OFCCP systemic compensation discrimination cases typically are proven under a disparate treatment, pattern or practice theory of discrimination.[2] The burdens of persuasion necessary to succeed on a discrimination claim differ depending on whether the case involves allegations of a pattern or practice of discrimination or allegations that a particular individual was subjected to discrimination. In a case involving alleged discrimination against a particular individual, the plaintiff must establish by a preponderance of the evidence that the employer made the challenged employment decision because of the individual's race, color, religion, sex, or national origin. *United States Postal Service Bd. of Governors* v. *Aikens*, 460 U.S. 711, 715 (1983). In a pattern or practice case, ''plaintiffs must ''establish by a preponderance of the evidence that racial discrimination was the company's standard operating procedure—the regular rather than the unusual practice.'' *Teamsters* v. *United States*, 431 U.S. 324, 336 (1977).'' *Bazemore* v. *Friday*, 478 U.S. 385, 398 (1986).

In addition to differences in the burdens of persuasion as between cases involving alleged discrimination against a particular individual and an alleged pattern or practice of discrimination, the burdens of production necessary to survive a motion for summary disposition are different between the two types of cases. In both types of cases, a plaintiff bears the initial burden of presenting a prima facie case of discrimination. There is no precise set of requirements for a plaintiff's prima facie case. ' ''The facts necessarily will vary in title VII cases, and the specification * * * of the prima facie proof required from [a plaintiff] is not necessarily applicable in every respect to differing factual circumstances.'' *Int'l Bhd. of Teamsters* v. *United States*, 431 U.S. 324, 358 (1977) (quoting McDonnell Douglas, 411 U.S. at 802 n. 13). ''The importance of McDonnell Douglas lies, not in its specification of the discrete elements of the proof there required, but in its recognition of the general principle that any Title VII plaintiff must carry the initial burden of offering evidence adequate to create an inference that an employment decision was based on a discriminatory criterion illegal under [Title VII].'' Teamsters, 431 U.S. at 358.

In an individual case, the plaintiff typically must rely on evidence pertaining to his or her own circumstances to establish a prima facie

[1] The Administrative Review Board, and, before its creation, the Secretary of Labor, have turned to Title VII standards for determining compliance with the nondiscrimination requirements of E.O. 11246. See, e.g., *OFCCP* v. *Greenwood Mills, Inc.*, 89–OFC–039, ARB Final Decision and Order, December 20, 2002, at 5; *OFCCP* v. *Honeywell*, 77–OFCCP–3, Secretary of Labor Decision and Order on Mediation, June 2, 1993, at 14 and 16, Secretary of Labor Decision and Remand Order, March 2, 1994. The EEOC has issued guidance on compensation discrimination in the form of a chapter in the EEOC Compliance Manual on ''Compensation Discrimination.'' EEOC Directive No. 915.003 (Dec. 5, 2000). EEOC is the agency with primary enforcement responsibility for Title VII and its reasonable interpretations of Title VII are given some deference by the courts. *See Gen. Elec. Co.* v. *Gilbert*, 429 U.S. 125, 141–42 (1976). E.O. 11246 has been amended several times since its original promulgation. For ease of reference, ''E.O. 11246'' or ''Executive Order 11246'' as used hereinafter refers to Executive Order 11246, as amended.

[2] The term ''systemic compensation discrimination'' used hereinafter references compensation discrimination under a disparate treatment, pattern or practice theory of discrimination.

case of discrimination. The prima facie case creates a presumption of discrimination that the employer may rebut by articulating a legitimate nondiscriminatory reason for the alleged discriminatory employment decision. *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792, 802 (1973). The employer must produce admissible evidence of a legitimate, nondiscriminatory reason for the challenged employment decision. *Texas Dep't of Community Affairs* v. *Burdine*, 450 U.S. 248, 254 (1981). ''Th[e] [employer's] burden is one of production, not persuasion; 'it can involve no credibility assessment.' '' *Reeves* v. *Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 142 (2000) (quoting *St. Mary's Honor Center* v. *Hicks*, 509 U.S. 502, 509 (1993)). Once the employer articulates a legitimate nondiscriminatory reason for the challenged employment decision, the plaintiff is afforded the opportunity to prove that the employer's articulated reason is a pretext for discrimination. McDonnell Douglas, 411 U.S. at 804; Reeves, 530 U.S. at 142. ''Proof that the [employer's] explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination. * * *'' Reeves, 530 U.S. at 147. ''Other evidence that may be relevant to any showing of pretext includes * * * [the employer's] general policy and practice with respect to minority employment. * * * On the latter point, statistics as to [the employer's] employment policy and practice may be helpful to a determination of whether [the employer's actions] * * * conformed to a general pattern of discrimination * * *'' McDonnell Douglas, 411 U.S. at 804–05.

In a pattern or practice case, the plaintiffs' ''initial burden is to demonstrate that unlawful discrimination has been a regular procedure or policy followed by an employer. * * *'' Teamsters, 431 U.S. at 360. ''The burden then shifts to the employer to defeat the prima facie showing of a pattern or practice by demonstrating that the [plaintiffs'] proof is either inaccurate or insignificant.'' *Id.* ''The employer's defense must, of course, be designed to meet the prima facie case of the [plaintiffs] * * * '' which typically focuses on ''a pattern of discriminatory decisionmaking.'' *Id.*, at 360 n. 46. However, there are no ''particular limits on the type of evidence an employer may use.'' *Id.*

Despite these differences in the burdens of persuasion and production, however, once the plaintiff has offered evidence that is sufficient to establish a prima facie case, and the employer has produced evidence that is sufficient to rebut the prima facie case, then the factfinder must decide whether plaintiffs have demonstrated discrimination by a preponderance of the evidence. ''[O]ur decision in *United States Postal Service Board of Governors* v. *Aikens*, 460 U.S. 711 (1983), although not decided in the context of a pattern-and-practice case, makes clear that if the defendants have not succeeded in having a case dismissed on the ground that plaintiffs have failed to establish a *prima facie* case, and have responded to the plaintiffs' proof by offering evidence of their own, the factfinder then must decide whether the plaintiffs have demonstrated a pattern or practice of discrimination by a preponderance of the evidence. This is because the only issue to be decided at that point is whether the plaintiffs have actually proved discrimination. *Id.*, at 715.'' Bazemore, 478 U.S. at 398.

B. OFCCP Has Not Issued Significant Interpretive Guidance on Systemic Compensation Discrimination Under Executive Order 11246

In 1970, the Department of Labor published ''Sex Discrimination Guidelines,'' codified at 41 CFR Part 60–20, which included a section (60–20.5) on ''[d]iscriminatory wages.'' 35 FR 8888 (June 9, 1970). The Sex Discrimination Guidelines (SDG) do not provide specific standards for determining systemic compensation discrimination for OFCCP or a contractor.[3] Rather, the SDG provide that ''[t]he employer's wages (sic) schedules must not be related to or based on the sex of the employees,'' and contains a short ''note'' that references the ''more obvious cases of discrimination * * * where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions.'' 41 CFR 60–20.5(a) (2004). OFCCP has not promulgated any definitive interpretation of the SDG, nor has a definitive interpretation arisen through longstanding agency practice.[4]

Instead, OFCCP has provided only a general policy statement about compensation discrimination in the preamble to a May 4, 2000 Notice of Proposed Rulemaking (NPRM). In the May 4, 2000 NPRM, OFCCP formally expressed the Department of Labor's policy regarding compensation analysis:

More recently, an additional objective of the proposed revision has been to advance the Department of Labor's goal of pay equity; that is, ensuring that employees are compensated equally for performing equal work.

65 FR 26089 (May 4, 2000).

This stated policy was reflected in several significant settlements in systemic compensation discrimination cases in which OFCCP relied on sophisticated multiple regression analyses to remedy an alleged violation of E.O. 11246. OFCCP has not, however, published formal guidance providing any interpretation of E.O. 11246 with respect to systemic compensation discrimination.

C. OFCCP's Informal Approaches to Systemic Compensation Discrimination in the Late 1990s Involved the Controversial ''Pay Grade Theory''

In the late-1990s several OFCCP regions began to use a controversial ''grade theory'' approach to compensation discrimination analysis.[5]

The basic unit of analysis under the grade theory is the pay grade or pay range. Under this theory, it is assumed that employees are similarly situated with respect to evaluating compensation decisions regarding such employees if the contractor has placed their jobs in the same pay grade:

By the very act of creating a grade level system, where each employee has approximately the same potential to move from the minimum to the maximum of his/her grade range dependent upon performance, the employer has recognized that certain jobs are essentially similar in terms of skill, effort and responsibility.

''Systemic Compensation Analysis: An Investigatory Approach'' (hereinafter ''SCA''), at 5. A later paper, ''Update on Systemic Compensation Analysis'' (hereinafter, ''Update''), also described this pay grade assumption:

[3] By contrast to sex-based compensation discrimination, OFCCP has published regulations providing specific guidance with respect to hiring discrimination. Thus, OFCCP is a signatory to the Uniform Guidelines on Employee Selection Procedures (UGESP), which provide formal guidance as to how OFCCP evaluates contractors' selection procedures to determine compliance with E.O. 11246. See 41 CFR Part 60–3. Before being published as a final rule, 43 Fed. Reg. 38290 (August 25, 1978), UGESP was published in the **Federal Register** as a proposed rule and subject to public comment. See 42 Fed. Reg. 65542 (December 30, 1977).

[4] The proposed standards contained in this Notice are intended to provide definitive interpretations of both the SDG and E.O. 11246 with respect to systemic compensation discrimination, regardless of the specific basis (*e.g.*, sex, race, national origin, etc.) of the discrimination.

[5] Although used in practice by several OFCCP regions for several years, the grade theory was never formally adopted by OFCCP.

Where we determine that each employee in a salary grade system has the same opportunity, subject to performance, to move to the maximum rate of the salary grade range without a change in job title, we believe the employer * * * has already identified certain jobs as having similar value to the organization.

Update, at 6.[6]

After identifying employees in the same pay grade, one version of the grade theory method called for a comparison of the median compensation of males versus females, and minorities versus non-minorities in each pay grade. SCA, at 6; Update, at 7. If there was a ''significant'' difference (although ''significant'' was not defined) in median compensation between males/females or minorities/non-minorities within a given pay grade, then the next step was to assess whether this disparity is explained by median or average differences in other factors, such as time in grade, prior experience, education, and performance. SCA, at 7; Update, at 11. However, this method did not use tests of statistical significance in determining whether a pattern of compensation discrimination exists. If a ''pattern'' of pay disparities (although ''pattern'' was not defined) emerged not explicable by analysis of median or average differences in time in grade, prior experience, or other factors, OFCCP alleged that the contractor violated the nondiscrimination requirements of E.O. 11246. Update, at 15.

In another version of the grade theory method used by some OFCCP regions in the late 1990s,[7] the pay grade was included as a factor in a regression model that typically covered all exempt employees in the workplace within a single, ''pooled'' regression. The regression typically included factors such as time in grade, experience, and education. This method did rely on tests of statistical significance, although rarely did OFCCP develop anecdotal evidence to support the statistical analysis under this method.

D. The Pay Grade Theory Is Inconsistent With Title VII Standards

OFCCP has discontinued using these pay grade methods because the agency has determined that the methods' principal assumptions related to pay grade or pay range do not comport with Title VII standards as to whether employees are similarly situated. OFCCP recognizes that, with respect to compensation discrimination, similarity in job content, skills and qualifications involved in the job, and responsibility level are crucial determinants of whether employees are similarly situated under Title VII. See, *e.g.*, EEOC Compliance Manual on ''Compensation Discrimination,'' EEOC Directive No. 915.003 (Dec. 5, 2000), at 10–5 to 10–8 [hereinafter referenced as ''CMCD''][8]; *Block* v. *Kwal-Howells, Inc.,* No. 03–1101, 2004 WL 296976, at *2–*4 (10th Cir. Feb. 17, 2004); *Williams* v. *Galveston Ind. Sch. Dist.,* No. 03–40436, 78 Fed. Appx. 946, 949–50, 2003 WL 22426852 (5th Cir. Oct. 23, 2003); *Verwey* v. *Illinois Coll. of Optometry,* 43 Fed. Appx. 996, 2002 WL 1836507, at *4 (7th Cir. Aug. 9, 2002); *Lang* v. *Kohl's Food Stores, Inc.,* 219 F.3d 919, 922–23 (7th Cir. 2002); *Rodriguez* v. *SmithKline Beecham,* 224 F.3d 1, 8 (1st Cir. 2000); *Coward* v. *ADT Sec. Sys., Inc.,* 140 F.3d 271, 274 (D.C. Cir. 1998); *Aman* v. *Cort Furniture Rental Corp.,* 85 F.3d 1078, 1087 (3d Cir. 1996); *Sprague* v. *Thorn Americas, Inc.,* 129 F.3d 1355, 1362 (10th Cir. 1997); *Tomka* v. *Seiler Corp.,* 66 F.3d 1295, 1310–11 (2d Cir. 1995), abrogated on other grounds by *Burlington Indus., Inc.* v. *Ellerth,* 524 U.S. 742 (1998); *Mulhall* v. *Advance Sec., Inc.,* 19 F.3d 586, 598 (11th Cir. 1994); *Brinkley-Obu* v. *Hughes Training, Inc.,* 36 F.3d 336, 343 (4th Cir. 1994); *Miranda* v. *B&B Cash Grocery Store, Inc.,* 975 F.2d 1518, 1526–31 (11th Cir. 1992); *EEOC* v. *Sears, Roebuck & Co.,* 839 F.2d 302, 243–53 (7th Cir. 1988); *Marcoux* v. *State of Maine,* 797 F.2d 1100, 1107 (1st Cir. 1986); *Eastland* v. *Tennessee Valley Auth.,* 704 F.2d 613, 624–25 (11th Cir. 1983); *Woodward* v. *United Parcel Serv., Inc.,* 306 F. Supp.2d 567, 574–75 (D. S.C. 2004); *Lawton* v. *Sunoco, Inc.,* No. 01–2784, 2002 WL 1585582, at *7 (E.D. Pa. Jul 17, 2002); *Stroup* v. *J.L. Clark,* No. 99C50029, 2001 WL 114404, at *6 (N.D. Ill. Feb. 2, 2001); *Donaldson* v. *Microsoft Corp.,* 205 F.R.D. 558, 563 (W.D. Wash. 2001); *Dobbs-Weinstein* v. *Vanderbilt Univ.,* 1 F. Supp.2d 783, 803–04 (M.D. Tenn. 1998); *Beard* v. *Whitley Co.* REMC, 656 F. Supp. 1461, 1471–72 (N.D. Ind. 1987); *Dalley* v. *Michigan Blue Cross/Blue Shield, Inc.,* 612 F. Supp. 1444, 1451–52 (E.D. Mich. 1985); *EEOC* v. *Kendall of Dallas, Inc.,* No. TY–80–441–CA, 1984 WL 978, at *9–*12 (E.D. Tex. Mar. 8, 1984); *Presseisen* v. *Swarthmore Coll.,* 442 F. Supp. 593, 615–19 (E.D. Pa. 1977), aff'd 582 F.2d 1275 (3d Cir. 1978)(Table).

Contrary to these standards, the grade theory assumed that employers' pre-existing job-groupings, such as pay grades or pay ranges, are absolute indicia of similarity in employees' job content, skills and qualifications involved in the job, and responsibility level. While all of the courts in the above string cite have implicitly rejected the grade theory by emphasizing the importance of facts about the work employees actually perform, several of these courts have expressly rejected the proposition that a pay grade offers absolute indicia of similarity in job content, qualifications and skills involved in the job, and responsibility level. See Williams, 78 Fed. Appx. at 949 n. 9; Cort Furniture, 85 F.3d at 1087; Woodward, 306 F. Supp.2d at 574–75. The facts about employees' actual work activities, the skills and qualifications involved in the job, and responsibility levels in a particular case may, of course, happen to coincide with the employer's pay grade or pay range, but the crucial determinant of whether the employees are similarly situated is their actual work activities, not the fact that the employees have been placed in the same pay grade or range.

In practice, utilization of the grade theory (as defined by the discussion above) resulted in groupings of employees performing dissimilar work. Indeed, as noted above, this approach was described by some as ''identify[ing] certain jobs as having similar value to the organization.'' Update at 6. To evaluate discrimination based on the ''value'' or ''worth'' of work to the employer constitutes the comparable worth theory of compensation discrimination which has been widely discredited by the courts. *See American Federation of State, County, and Municipal Employees* v. *State of Washington,* 770 F.2d 1401, 1404 (9th Cir. 1985)(''The comparable worth theory, as developed in the case before us, postulates that sex-based wage discrimination exists if employees in job classifications occupied primarily by women are paid less than employees in job classifications filled primarily by men, if the jobs are of equal value to the employer, though otherwise dissimilar.''); *Colby* v. *J.C. Penney Co.,* 811 F.2d 1119, 1125–26 (7th Cir. 1987)(describing comparable worth theory as ''bas[ing] liability on the fact that the[] employer paid higher wages to workers in job classifications predominantly occupied by men than to

[6] OFCCP officials informally distributed the SCA and the Update in the late 1990's. They were not published by OFCCP nor did they bear any indication of formal agency approval, *e.g.*, they were not printed on OFCCP letterhead.

[7] This method was not described in materials made available to the general public. The method was used primarily in OFCCP's Southeast Region.

[8] As noted in footnote 1, *supra.,* the EEOC is the agency with primary enforcement responsibility for Title VII, and its reasonable interpretations of Title VII are given some deference by the courts. *See General Elec. Co.* v. *Gilbert,* 429 U.S. 125, 141–42 (1976).

workers in job classifications predominantly occupied by women, though it paid the same wages to men and women within each classification''); *American Nurses Association* v. *Illinois,* 783 F.2d 716, 720–22 (7th Cir. 1986)(considering plaintiffs ''charge that the state pays workers in predominantly male job classifications a higher wage not justified by any difference in the relative worth of the predominantly male and the predominantly female jobs in the state's roster.''); *Lemons* v. *City and County of Denver,* 620 F.2d 228, 229 (10th Cir. 1980)(''In summary, the suit is based on the proposition that nurses are underpaid in City positions, and in the community, in comparison with other and different jobs which they assert are of equal worth to the employer.''); *Christensen* v. *Iowa,* 563 F.2d 353, 354–56 (8th Cir. 1977)(''Appellants, who are clerical employees at UNI, argue that UNI's practice of paying male plant workers more than female clerical workers of similar seniority, where the jobs are of equal value to UNI, constitutes sex discrimination and violates Title VII''); *see also County of Washington* v. *Gunther,* 452 U.S. 161, 165 (1981)(''Respondents'' claim is not based on the controversial concept of 'comparable worth' under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community.'' [footnotes omitted]); Gunther, 452 U.S. at 203 (Rehnquist, J., dissenting)(''The opinion does not endorse the so-called 'comparable worth' theory: though the Court does not indicate how a plaintiff might establish a prima facie case under Title VII, the Court does suggest that allegations of unequal pay for unequal, but comparable, work will not state a claim on which relief may be granted. The Court, for example, repeatedly emphasizes that this is not a case where plaintiffs ask the court to compare the value of dissimilar jobs or to quantify the effect of sex discrimination on wage rates.''); Judith Olans Brown *et al.*, Equal Pay for Jobs of Comparable Worth: An Analysis of the Rhetoric, 21 Harv. C.R.–C.L. Rev. 127, 129 (1986)('' 'Comparable worth' means that workers, regardless of their sex, should earn equal pay for work of comparable value to their common employer. . . . The basic premise of comparable worth theory is that women should be able to substantiate a claim for equal wages by showing that their jobs and those of male workers are of equal value to their common employer.''); Hydee R. Feldstein, Comment, *Sex-Based Wage Discrimination Claims After County of Washington* v. *Gunther,* 81 Colum. L. Rev. 1333, 1333 (1981)(noting comparable worth ''theory holds that employees performing work of equal value, even if the work they do is different, should receive the same wages.'').

Based on these considerations, the Department interprets E.O. 11246 and the SDG as not permitting the grade theory approach to systemic compensation discrimination. Instead, the Department interprets E.O. 11246 and the SDG as prohibiting systemic compensation discrimination involving dissimilar treatment of individuals who are similarly situated, based on similarity in work performed, skills and qualifications involved in the job, and responsibility levels.

E. The Department Has Decided To Promulgate Interpretive Guidance on Systemic Compensation Discrimination To Guide Agency Officials and Covered Contractors and Subcontractors

The Department of Labor has decided to formally propose detailed standards interpreting E.O. 11246 and the SDG with respect to systemic compensation discrimination and to solicit public comment on the proposed standards. This interpretive guidance also will provide standards and methods for OFCCP evaluations of contractors' compensation practices during compliance reviews. This will ensure that agency personnel and covered federal contractors and subcontractors understand the substantive standards for systemic compensation discrimination under E.O. 11246. The Department believes that contractors and subcontractors are more likely to comply with E.O. 11246 if they understand the substantive standards which determine whether there is systemic compensation discrimination prohibited by E.O. 11246. Further, agency officials will have a stronger basis for pursuing investigations of possible systemic compensation discrimination because of the transparency and uniformity provided by these standards. Finally, the Department will have the benefit of commentary from all interested parties in developing final guidelines.

These proposed standards are intended to govern OFCCP's analysis of contractors' compensation practices, and in particular, OFCCP's determination of whether a contractor has engaged in systemic compensation discrimination. In addition, these proposed standards are intended to constitute a definitive interpretation of the SDG and E.O. 11246 with respect to systemic compensation discrimination.

II.Discussion of the Proposed Standards

OFCCP proposes to adopt standards for interpreting E.O. 11246 and the SDG with respect to systemic compensation discrimination. The systemic compensation discrimination analysis as set forth in these proposed standards has two major characteristics: (1) the determination of employees who are ''similarly situated'' for purposes of comparing contractor pay decisions will focus on the similarity of the work performed, the levels of responsibility, and the skills and qualifications involved in the positions; and (2) the analysis will rely on a statistical technique known as multiple regression.

Under OFCCP's proposed standard, employees are similarly situated with respect to pay decisions where the employees perform similar work, have similar responsibility levels, and occupy positions involving similar qualifications and skills. See discussion and cases cited under Section ID, *supra*.[9]

The determination of whether employees are similarly situated must be based on the actual facts about the work performed, the responsibility level of the employees, and whether the positions involve similar skills and qualifications. The employer's preexisting groupings developed and maintained for other purposes, such as job families or affirmative action program job groups, may provide some indication of similarity in work, responsibility level, and skills and qualifications. However, these preexisting groupings are not dispositive, and OFCCP will not assume that these groupings involve groupings of similarly situated employees. For example, it cannot be assumed that employees are similarly situated merely because they share the same pay grade

[9] Federal courts disagree on whether the Equal Pay Act's standard of ''substantial equality'' applies to gender-based pay discrimination claims under Title VII, absent direct evidence of discrimination. *See, e.g., Conti* v. *Universal Enter., Inc.*, 50 Fed. Appx. 690, 2002 WL 31108827, at *7 (6th Cir. Sept. 20, 2002); *Clark* v. *Johnson & Higgins,* 181 F.3d 100, 1999 WL 357804, at *3–*4 (6th Cir. May 28, 1999)(Text in Westlaw); *Loyd* v. *Phillips Bros., Inc.*, 25 F.3d 518, 525 (7th Cir. 1994); *EEOC* v. *Sears, Roebuck & Co.*, 839 F.2d 302, 243–53 (7th Cir. 1988); *Merrill* v. *S. Methodist Univ.*, 806 F.2d 600, 606 (5th Cir. 1986); *McKee* v. *Bi-State Dev. Agency*, 801 F.2d 1014, 1019 (8th Cir. 1986); *Plemer* v. *Parsons-Gilbane*, 713 F.2d 1127, 1133–34 (5th Cir. 1983); *see also* CMCD, at 10–6 n.18. Because an OFCCP enforcement action may be subject to APA review in a federal court that does not adopt the ''similarly situated'' standard, OFCCP will consult with the Office of the Solicitor to address this issue on a case by case basis.

or range, or because their pay can progress to the top of a pay grade or range without changing jobs.[10] Thus, OFCCP will investigate whether such preexisting groupings do in fact group employees who perform similar work, and whose positions involve similar skills, qualifications, and responsibility levels, by looking at job descriptions and conducting employee interviews. Based on sufficient empirical data (*e.g.*, job descriptions and employee interviews), OFCCP will determine which employees are in fact similarly situated.

In addition to similarity in work performed, skills and qualifications, and responsibility levels, systemic compensation discrimination under E.O. 11246 requires that the comparison take into account legitimate factors that affect compensation. In order to account for the influence of such legitimate factors on compensation, a statistical analysis known as ''multiple regression,'' must be used. Multiple regression is explained as follows:

> Multiple regression analysis is a statistical tool for understanding the relationship between two or more variables. Multiple regression involves a variable to be explained—called the dependent variable—and additional explanatory variables that are thought to produce or be associated with changes in the dependent variable. For example, a multiple regression analysis might estimate the effect of the number of years of work on salary. Salary would be the dependent variable to be explained; years of experience would be the explanatory variable. Multiple regression analysis is sometimes well suited to the analysis of data about competing theories in which there are several possible explanations for the relationship among a number of explanatory variables. Multiple regression typically uses a single dependent variable and several explanatory variables to assess the statistical data pertinent to these theories. In a case alleging sex discrimination in salaries, for example, a multiple regression analysis would examine not only sex, but also other explanatory variables of interest, such as education and experience. The employer—defendant might use multiple regression to argue that salary is a function of the employee's education and experience, and the employee—plaintiff might argue that salary is also a function of the individual's sex.

Daniel L. Rubenfeld, Reference Guide on Multiple Regression, in Federal Judicial Center, Reference Manual on Scientific Evidence, at 181 (2d ed. 2000).

The multiple regression model must include those factors that are important to how the contractor in practice makes pay decisions. ''Such factors could include the employees' education, work experience with previous employers, seniority in the job, time in a particular salary grade, performance ratings, and others.'' CMCD, at 10–18. OFCCP generally will attempt to build the regression model in such a way that controls for the factors that the investigation reveals are important to the employer's pay decisions, but also allows the agency to assess how the employers' pay decisions affect most employees. One factor that must be controlled for in the regression model is categories or groupings of jobs that are similarly situated based on the analysis of job similarity noted above (*i.e.*, similarity in the content of the work employees perform, and similarity in the skills, qualifications, and responsibility levels of the positions the employees occupy). This will ensure that the analysis compares the treatment of employees who are in fact similarly situated.

In addition, OFCCP will investigate the facts of each particular case to ensure that factors included in the regression are legitimate and are not themselves influenced by unlawful discrimination, which is often discussed in case law as a factor ''tainted'' by discrimination. However, OFCCP will not automatically presume that a factor is tainted without initially investigating the facts of the particular case. OFCCP will determine whether a factor is tainted by evaluating proof of discrimination with respect to that factor, but not based on the fact that the factor has an influence on the outcome of a regression model that includes the factor. *See, e.g.*, *Morgan* v. *United Parcel Service of America, Inc.*, 380 F.3d 459, 470 (8th Cir. 2004) (''Plaintiffs'' only evidence of discrimination in past pay is the apparent correlation between race and center-manager base pay during the class period. But that correlation is what Plaintiffs have evidence of only by omitting past pay. They have no evidence, statistical or otherwise, that past pay disparities were racially discriminatory. This sort of bootstrapping cannot create an inference of discrimination with regard to either class-period base pay or past pay.''); *Smith* v. *Xerox Corp.*, 196 F.3d 358, 371 n. 11 (2d Cir. 1999) (''Absent evidence tending to show that the CAF scores were tainted they should have been included in a multiple regression analysis in an effort to eliminate a relatively poor performance compared to coworkers as a cause of each plaintiff's termination. Certainly, performance is a factor Xerox was permitted to consider in deciding whom to retain.''); *Ottaviani* v. *State Univ. of New York*, 875 F.2d 365, 325 (2d Cir. 1988) (''The question to be resolved, then, in cases involving the use of academic rank factors, is whether rank is tainted by discrimination at the particular institution charged with violating Title VII. Although appellants reiterate on appeal their claim that rank at New Paltz was tainted, it is clear that the district judge accepted and considered evidence from the parties on both sides of this issue, and that she rejected the plaintiffs' contentions on this point. At trial, the plaintiffs failed to adduce any significant statistical evidence of discrimination as to rank. As the district court stated in its opinion, the plaintiffs' studies of rank, rank at hire, and waiting time for promotion 'were mere compilations of data' which neither accounted for important factors relevant to assignment of rank and promotion, 'nor demonstrated that observed differences were statistically significant.' Ottaviani, 679 F.Supp. at 306. The defendants, on the other hand, offered persuasive objective evidence to demonstrate that there was no discrimination in either placement into initial rank or promotion at New Paltz between 1973 and 1984, and the district court chose to credit the defendants' evidence. Upon review of the record, we cannot state that the court's rulings in this regard were clearly erroneous.''); CMCD, at 10–18 (discussing use of performance rating in multiple regression analysis for assessing systemic compensation discrimination).

The factors that influence pay decisions may not bear the same relationship to compensation for all categories of jobs in the employer's workforce. For example, performance may have a more significant influence on compensation for a high-level executive, than for technicians or service workers. This issue must be addressed through either of two methods. One method is to perform separate regressions for each category of jobs in which the relationship between the factors and compensation is similar (while including category factors in each regression that control for groupings of employees who are similarly situated based on work performed, responsibility level, and skills and qualifications). If separate regressions by categories of jobs would not permit OFCCP to assess the way the contractor's compensation practices impact on a significant number of employees, OFCCP may perform a ''pooled'' regression, which combines

[10] In this respect, OFCCP will not rely on the grade theory assumptions discussed *supra.*, at Sections IC and ID.

these categories of jobs into a single regression (while including an OFCCP-developed category factor in the ''pooled'' regression that controls for groupings of employees who are similarly situated based on work performed, responsibility level, and skills and qualifications). However, if a pooled regression is used, the regression must include appropriate ''interaction terms'' [11] in the pooled regression to account for differences in the effects of certain factors by job category. OFCCP will run statistical tests generally accepted in the statistics profession (*e.g.*, the ''Chow test''), to determine which interaction terms should be included in the pooled regression analysis.

Systemic compensation discrimination under E.O. 11246 must be based on disparities that are ''statistically significant,'' *i.e.*, those that could not be expected to have occurred by chance. ''While not intending to suggest that 'precise calculations of statistical significance are necessary in employing statistical proof,' the Supreme Court has stated that ''a fluctuation of more than two or three standard deviations would undercut the hypothesis that decisions were being made randomly with respect to [a protected trait].'' *Hazelwood Sch. Dist.* v. *United States*, 433 U.S. 299, 311 n.17 (1977).'' CMCD, at 10–14 n.32. To ensure uniformity and predictability, OFCCP will conclude that a compensation disparity is statistically significant under these standards if it is significant at a level of two or more standard deviations, based on measures of statistical significance that are generally accepted in the statistics profession.

OFCCP will seldom make a finding of systemic discrimination based on statistical analysis alone, but will obtain anecdotal evidence to support the statistical evidence. *See, e.g.*, Teamsters, 431 U.S. at 338–39 (''The Government bolstered its statistical evidence with the testimony of individuals who recounted over 40 specific instances of discrimination. * * * The individuals who testified about their personal experiences with the company brought the cold numbers convincingly to life.''); Bazemore, 478 U.S. at 473 (noting that statistics were supported by ''evidence consisting of individual comparisons between salaries of blacks and whites similarly situated''); Morgan, 380 F.3d at 471 (''One of the most important flaws in Plaintiffs'' case is that they adduced no individual testimony regarding intentional discrimination. As mentioned above, Plaintiffs' purported anecdotal evidence was insufficient for the working-conditions claim, and we see none with regard to pay. Although such evidence is not required, the failure to adduce it '' 'reinforces the doubt arising from the questions about validity of the statistical evidence.' '' *EEOC* v. *Sears, Roebuck & Co.*, 839 F.2d 302, 311 (7th Cir. 1988) (quoting *Griffin* v. *Board of Regents*, 795 F.2d 1281, 1292 (7th Cir. 1986))''); *Dukes* v. *Wal-Mart Stores, Inc.*, 22 F.R.D. 137, 165–66 (N.D. Cal. 2004) (''[P]laintiffs have submitted * * * 114 declarations from class members around the country * * *. [who will] testify to being paid less than similarly situated men, * * *, and being subjected to various individual sexist acts.''); *Bakewell* v. *Stephen F. Austin Univ.*, 975 F. Supp. 858, 905–06 (E.D. Tex. 1996) (''The paucity of anecdotal evidence of discrimination severely diminishes plaintiffs' contention that a pattern or practice of salary discrimination against female faculty members prevails at SFA.''); see also CMCD, at 10–13 n.30 (''A cause finding of systemic discrimination should rarely be based on statistics alone.'').

In order to equip OFCCP to conduct statistical analysis necessary for evaluating whether there is systemic compensation discrimination, the agency has created a Division of Statistical Analysis and hired expert-level statisticians to staff this new unit.

III. Proposed Standards

Standards for Systemic Compensation Discrimination Under Executive Order 11246

1. As used herein, ''systemic compensation discrimination'' is discrimination under a pattern or practice theory of disparate treatment.

2. Employees are similarly situated under these standards if they are similar with respect to the work they perform, their responsibility level, and the skills and qualifications involved in their positions. In determining whether employees are similarly situated under these standards, actual facts regarding employees' work activities, responsibility, and skills and qualifications are determinative. Preexisting groupings, such as pay grades or AAP job groups, are not controlling; rather, such groupings may be relevant only to the extent that they do in fact group employees with similar work, skills and qualifications and responsibility levels. To determine whether such preexisting groups are relevant one must evaluate and compare information obtained from job descriptions and from employee interviews. The determination that employees are similarly situated may not be based on the fact that the contractor or subcontractor has grouped employees into a particular grouping, such as a pay grade or pay range, or that employees' pay can progress to the top of the pay grade or range based on performance or without changing jobs. Rather, such preexisting groupings must in fact group employees who perform similar work, and who occupy positions involving similar skills, qualifications, and responsibility levels, which may be determined only by understanding employees' actual work activities.

3. Systemic compensation discrimination exists where there are statistically significant compensation disparities between similarly situated employees (as defined in Paragraph 2, above), after taking into account legitimate factors which influence compensation. Such legitimate factors may include education, experience, performance, productivity, location, etc. The determination of whether there are statistically significant compensation disparities between similarly situated employees after taking into account such legitimate factors must be based on a multiple regression analysis.

4. A compensation disparity is statistically significant under these standards if it is significant at a level of two or more standard deviations, based on measures of statistical significance that are generally accepted in the statistics profession.

5. If a pooled regression model is used, this must be accompanied by statistical tests generally accepted in the statistics profession (*e.g.*, the ''Chow test''), to determine which interaction terms should be included in the pooled regression model.

Standards for OFCCP Evaluation of Contractors' Compensation Practices

1. OFCCP will investigate contractors' and subcontractors' compensation practices to determine whether the contractor or subcontractor has engaged in systemic compensation discrimination under these standards. OFCCP will issue a Notice of Violations alleging systemic discrimination with respect to compensation practices based only on these standards.

2. OFCCP will make a finding of systemic compensation discrimination in those cases where there is anecdotal

[11] An ''interaction term'' is a factor used in the regression model whose value is the result of a combination of subfactors, which allows the factor to vary based on the combined effect of the subfactors. For example, a performance by job level interaction term would allow performance to have a different impact on compensation depending on the job level.

evidence of discrimination (as discussed in Paragraph 6, below, which notes that, except in unusual cases, OFCCP will not issue a Notice of Violation (NOV) alleging systemic compensation discrimination without providing anecdotal evidence to support OFCCP's statistical analysis) and where there exists a statistically significant (as defined in Paragraph 4, below) compensation disparity based on a multiple regression analysis that compares similarly situated employees (as defined in Paragraph 3, below) and controls for factors that OFCCP's investigation reveal were used in making pay decisions. OFCCP may reject inclusion of such a factor upon proof that the factor was actually tainted by the employer's discrimination. OFCCP will attach the results of the regression analysis to, and summarize the anecdotal evidence in, the Notice of Violations issued to the contractor or subcontractor.

3. Employees are similarly situated under these standards if they are similar with respect to the work they perform, their responsibility level, and the skills and qualifications involved in their positions. In determining whether employees are similarly situated under these standards, OFCCP will collect and rely on actual facts regarding employees' work activities, responsibility, and skills and qualifications. In addition, OFCCP will investigate whether preexisting groupings, such as pay grades or AAP job groups, do in fact group employees with similar work, skills and qualifications and responsibility levels, by evaluating and comparing information obtained from job descriptions and from employee interviews. OFCCP will not base its determination that employees are similarly situated on the fact that the contractor or subcontractor has grouped employees into a particular grouping, such as a pay grade or pay range, or that employees' pay can progress to the top of the pay grade or range based on performance or without changing jobs. Rather, OFCCP will investigate whether such preexisting groupings do in fact group employees who perform similar work, and who occupy positions involving similar skills, qualifications, and responsibility levels, by looking at job descriptions and conducting employee interviews.

4. A compensation disparity is statistically significant under these standards if it is significant at a level of two or more standard deviations, based on measures of statistical significance that are generally accepted in the statistics profession.

5. OFCCP will determine whether a pooled regression model is appropriate based on two factors: (a) The objective to include at least 80% of the employees (in the workforce subject to OFCCP's compliance review) in some regression analysis; and (b) whether there are enough incumbent employees in a particular regression to produce statistically meaningful results. If a pooled regression is required, OFCCP will conduct statistical tests generally accepted in the statistics profession (*e.g.*, the ''Chow test''), to determine which interaction terms should be included in the pooled regression model.

6. In determining whether a violation has occurred, OFCCP will consider whether there is anecdotal evidence of compensation discrimination, in addition to statistically significant compensation disparities. Except in unusual cases, OFCCP will not issue a Notice of Violation (NOV) alleging systemic compensation discrimination without providing anecdotal evidence to support OFCCP's statistical analysis. In unusual cases, OFCCP may assert a systemic discrimination violation based only on anecdotal evidence, if such evidence presents a pattern or practice of compensation discrimination.

7. OFCCP will also assert a compensation discrimination violation if the contractor establishes compensation rates for jobs (not for particular employees) that are occupied predominantly by women or minorities that are significantly lower than rates established for jobs occupied predominantly by men or non-minorities, where the evidence establishes that the contractor made the job wage-rate decisions based on the sex, race or ethnicity of the incumbent employees that predominate in each job. Such evidence of discriminatory intent may consist of the fact that the contractor adopted a market survey to determine the wage rate for the jobs, but established the wage rate for the predominantly female or minority job lower than what that market survey specified for that job, while establishing for the predominantly male or non-minority job the full market rate specified under the same market survey.

Signed at Washington, DC this 10th day of November, 2004.

Victoria A. Lipnic,

Assistant Secretary for the Employment Standards Administration.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

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DEPARTMENT OF LABOR

Employment Standards Administration

Office of Federal Contract Compliance Programs; Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination, Notice

AGENCY: Office of Federal Contract Compliance Programs, Employment Standards Administration, Department of Labor.

ACTION: Notice of proposed guidelines for self-evaluation of compensation practices for compliance with Executive Order 11246 with respect to systemic compensation discrimination; request for comments.

SUMMARY: The Office of Federal Contract Compliance Programs requests comments on proposed guidelines for self-evaluation of compensation practices for compliance with Executive Order 11246 with respect to systemic compensation discrimination.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be postmarked by December 16, 2004.

Facsimile: Your comments must be sent by December 16, 2004.

ADDRESSES: Comments should be submitted to Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP. Electronic mail is the preferred method for submittal of comments. Comments by electronic mail must be clearly identified as pertaining to the notice of guidelines for self-evaluation of compensation practices for compliance with nondiscrimination requirements of Executive Order 11246 with respect to systemic compensation discrimination, and sent to *ofccp-public@dol.gov*. As a convenience to commenters, public comments transmitted by facsimile (FAX) machine will be accepted. The telephone number of the FAX receiver is (202) 693–1304. To assure access to the FAX equipment, only public comments of six or fewer pages will be accepted via FAX transmittal. Where necessary, hard copies of comments, clearly identified as pertaining to the notice of proposed standards and methodologies for evaluating contractors' and subcontractors' compensation practices, may also be delivered to Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, NW.,

Washington, DC 20210. Because of delays in mail delivery, OFCCP suggests that commenters planning to submit comments via U.S. Mail place those comments in the mail well before the deadline by which comments must be received. Receipt of submissions will not be acknowledged, except that the sender may request confirmation of receipt by calling OFCCP at (202) 693–0102 (voice), or (202) 693–1308 (TTY).

FOR FURTHER INFORMATION CONTACT: Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0102 (voice), or (202) 693–1308 (TTY). Copies of this notice in alternative formats may be obtained by calling (202) 693–0102 (voice), or (202) 693–1308 (TTY). The alternative formats available are large print, electronic file on computer disk, and audiotape. The Notice is available on the Internet at *http://www.dol.gov/esa.*

SUPPLEMENTARY INFORMATION: On May 4, 2000, OFCCP proposed substantial revisions to affirmative action program requirements. 65 FR 26089 (May 4, 2000). As OFCCP explained in the preamble to these May 4, 2000 proposed revisions:

> More recently, an additional objective of the proposed revision has been to advance the Department of Labor's goal of pay equity; that is, ensuring that employees are compensated equally for performing equal work. * * * This NPRM encourages contractors to analyze their own compensation packages to ensure that all their employees are being paid fairly.

65 FR 26089 (May 4, 2000).

On November 13, 2000, OFCCP published a Final Rule adopting many of the proposed revisions to the regulatory requirements for written affirmative action programs. 65 FR 68022 (Nov. 13, 2000). OFCCP adopted a requirement that covered contractors evaluate their ''[c]ompensation system(s) to determine whether there are gender-, race- or ethnicity-based disparities.'' 65 FR 68046 (Nov. 13, 2000) (referencing 41 CFR 60–2.17(b)(3)).

OFCCP received many comments in response to the Proposed Rule on this compensation self-evaluation requirement. As explained in the Preamble to the November 13, 2000 Final Rule:

> Many of the comments focused on the requirement to review compensation systems, with several commenters asserting that OFCCP does not have authority to enforce equal pay concerns, that analysis of compensation systems is not required by the current regulations, that compensation analyses impose an additional burden, or that OFCCP did not specify the types of analyses it would find acceptable. Commenters also expressed confusion about how the information gained from [the compensation analysis] should be used by contractors, and how the contractor's actions will be evaluated by OFCCP.

65 FR 68036 (Nov. 13, 2000).

OFCCP responded to these commenters in the Preamble to the November 13, 2000 Final Rule: ''[C]ontractors have the ability to choose a type of compensation analyses that will determine whether there are gender-, race-, or ethnicity-based disparities.'' 65 FR 68036 (Nov. 13, 2000).

OFCCP has not, however, provided guidance to contractors or to OFCCP personnel on suggested techniques for compliance with this compensation self-evaluation requirement. This Directive is intended to provide suggested techniques for complying with the compensation self-evaluation requirement, although compliance with this Directive is not required for compliance with Section 60–2.17(b)(3). OFCCP has included an incentive for contractors to adopt voluntarily the general standards outlined in this Directive. Specifically, if a contractor, in good faith, reasonably implements the general standards outlined herein, OFCCP will coordinate its compliance monitoring activities with the contractor's self-evaluation approach. However, compliance with this Directive is not the only way to comply with Section 6–2.17(b)(3).

While developing these guidelines for conducting compensation self-evaluations, OFCCP recognizes the risk of liability that an employer faces when making corrective compensation adjustments under a self-evaluation process. For example, female or minority employees may bring claims based on the theory that the employer's own self-evaluation study established that the employer engaged in discrimination or that the employer did not make sufficient compensation adjustments to remedy the discrimination. *See, e.g., Cullen* v. *Indiana Univ.*, 338 F.3d 693, 701–04 (7th Cir. 2003)(female professor sued university alleging compensation discrimination and basing her claim, in part, on university's pay equity study). Similarly, male or non-minority employees may sue the employer alleging violation of Title VII because the employer gave salary adjustments to female or minority employees under the compensation self-evaluation. *See, e.g., Rudenbusch* v. *Hughes*, 313 F.3d 506, 515–16 (9th Cir. 2002)(employer's self-audit, regression analysis was not technically sufficient to foreclose male professor's discrimination claim against the employer); *Maitland* v. *Univ. of Minn.*, 155 F.3d 1013, 1016–18 (8th Cir. 1998)(same); *Smith* v. *Virginia Commonwealth Univ.*, 84 F.3d 672, 676–77 (4th Cir. 1996)(same). OFCCP has attempted to provide guidelines that are technically sufficient to withstand judicial scrutiny, so that contractors do not face potential liability for implementing a robust and effective self-evaluation process.

Proposed Guidelines:

Proposed Guidelines for Self-Evaluation of Compensation Practices for Compliance With Executive Order 11246 With Respect to Systemic Compensation Discrimination

I. Guidelines

OFCCP will continue to permit contractors to choose their own form of compensation self-evaluation techniques to comply with 41 CFR 60–2.17(b)(3). However, as an incentive for contractors to implement a compensation self-evaluation system that conforms to the general standards outlined in this Notice, OFCCP will deem a contractor in compliance with Section 60–2.17(b)(3) and coordinate its compliance monitoring activities as explained in Section II of this Notice, if the contractor's compensation self-evaluation system meets the following general standards:

A. The self-evaluation is performed by groupings of employees that are similarly situated, referenced hereinafter as ''Similarly Situated Employee Groupings,'' or ''SSEGs.'' Employees may be placed into the same SSEG if they are ''similarly situated'; that is, if the work they perform is similar in content, responsibility, and requisite skill and qualifications. Employees may not be grouped in an SSEG for purposes of this Notice unless the work performed, responsibility level, and requisite skill and qualifications involved in their positions are actually similar, regardless of any employer-created designation, such as job title, job classification, pay grade or range, etc. The fact that an employer has grouped employees into a particular pay grade or range does not necessarily mean that these employees are similarly situated; the determining factors are whether the employees are performing similar work, have similar responsibility level, and occupy positions involving similar skills and qualifications.

B. The contractor must make a reasonable attempt to produce SSEGs that are large enough for meaningful statistical analysis. In general, SSEGs should contain at least 30 employees overall, and contain five or more incumbents who are members of either of the following pairs: male/female or minority/non-minority. In certain cases, small numbers of employees will not be sufficiently similarly situated to other employees to permit them to be grouped in an SSEG. Such employees may be eliminated from the statistical evaluation process; however, the contractor is expected to conduct a self-evaluation of pay decisions related to such employees using non-statistical methods. Further, the contractor's statistical analyses must encompass a significant majority of the employees in the particular affirmative action program or workplace. Where the statistical analyses do not encompass at least 80% of the employees in the affirmative action program or workplace, OFCCP will carefully scrutinize the statistical analyses and associated non-statistical self-evaluations.

C. On an annual basis, the contractor must perform some type of statistical analysis that evaluates SSEGs (as defined in Section IA of this Notice) *and* accounts for factors that legitimately affect the compensation of the members of the SSEGs under the contractor's compensation system, such as experience, education, performance, productivity, location, etc. For contractors with 250 or more employees, the statistical analysis must be multiple regression analyses. The contractor must ensure that any factor within the contractor's control that is included in the analysis is not itself subject to discrimination, although such a factor may be included unless there is evidence that the factor actually was subject to discrimination. Correlation between such a factor and a protected characteristic does not automatically disqualify the factor, if the employer has implemented formal standards to constrain subjective decisionmaking. The analysis must include tests of statistical significance that are generally recognized as appropriate in the statistics profession.

D. The contractor must investigate any statistically significant compensation disparities produced by the self-evaluation analyses that it has developed. OFCCP considers an identified disparity to be statistically significant if the significance level of the disparity is two or more standard deviations from a zero disparity level.[1] The contractor must adequately determine whether such statistical disparities are explained by legitimate factors or otherwise are not the product of unlawful discrimination. If the statistical disparities cannot be explained, the contractor must provide appropriate remedies. The remedies that are appropriate will depend on the time period in which the disparities emerged. For the initial implementation of the compensation self-evaluation system, the contractor may have to make adjustments based on both current disparities and prior disparities. OFCCP uses a two-year window for back pay corrections. For periodic iterations of the self-evaluation system after the initial implementation, the remedy would involve correcting current disparities. Through the sources of information available to OFCCP under Section IE of this Notice, OFCCP will carefully evaluate whether the contractor has properly investigated such disparities and has adequately corrected any disparities that are not explained by legitimate factors.

E. The contractor must contemporaneously create and retain the following documents and data:

(1) Documents necessary to explain and justify its decisions with respect to SSEGs, exclusion of certain employees, factors included in the statistical analyses, and the form of the statistical analyses. Such documents must be retained throughout the period in which OFCCP would deem the contractor's compensation practices in compliance with Executive Order 11246, as described in Section IIB of this Notice;

(2) The data used in the statistical analyses and the results of the statistical analyses for two years from the date that the statistical analyses are performed;

(3) The data and documents explaining the results of the non-statistical methods that the contractor used to evaluate pay decisions of those employees who were eliminated from the statistical evaluation process, which must be retained throughout the period in which OFCCP would deem the contractor's compensation practices in compliance with Executive Order 11246, as described in Section IIB of this Notice;

(4) Documentation as to any follow-up investigation into statistically significant disparities, the conclusions of such investigation, and any pay adjustments made to remedy such disparities. These documents must be retained for a period of two years from the date that the follow-up investigation is performed.

F. The contractor must make all of the documents and data referenced in Section IE available to OFCCP during a compliance review. OFCCP may also review any personnel records and conduct any employee interviews necessary to determine the accuracy of any representation made by the contractor in such documentation or data.

II. Procedure

If the contractor's compensation self-evaluation system meets the standards set forth in Section I of this Notice, OFCCP will coordinate its compliance monitoring activities as follows:

A. During a compliance review, OFCCP will assess whether the contractor's compensation self-evaluation system comports with the general standards outlined in Section I of this Notice.

B. If the contractor's compensation self-evaluation system reasonably meets the general standards outlined in Section I of this Notice, OFCCP will consider the contractor's compensation practices to be in compliance with Executive Order 11246. However, OFCCP may suggest in writing that the contractor make prospective modifications to improve the self-evaluation system's conformity with the general standards outlined in Section I of this Notice, where OFCCP concludes that the self-evaluation system is only marginally reasonable under these guidelines; thereafter, during future compliance reviews, OFCCP will assess whether the contractor made the suggested changes in determining the contractor's prospective compliance with E.O. 11246. If, during a future compliance review, OFCCP determines that the contractor has not made the changes that OFCCP suggested during the prior compliance review, the contractor's self-evaluation system will no longer be deemed to comport with the general standards outlined in Section I of this Notice.

C. OFCCP may review the documents and data set forth in Section IE to determine whether the contractor's compensation self-evaluation system reasonably meets the general standards

[1] This significance level roughly translates to a measured absolute disparity that is more than two times the standard error of the estimated value. Kaye, David H. and Freedman, David A. (2000), Reference Manual on Scientific Evidence Second Edition, Federal Judicial Center, Washington, DC, p. 124, note 138. Using a two-tailed test, a statistically significant disparity is a disparity with a significance level of 0.05 or less (subject to the consideration of what is a meaningful difference). This criterion means that, *e.g.*, a disparity in the pay between males and females being either positive or negative, would have a less than a 1-in-20 chance of occurrence unrelated to potential discrimination.

outlined in this Notice and, if applicable, whether the contractor reasonably made the changes that OFCCP suggested during a prior compliance review.

D. OFCCP personnel will direct technical issues about whether a contractor's self-evaluation system meets the general standards outlined in Section I of this Notice to OFCCP's Director of Statistical Analysis in the National Office, or his or her designee.

E. Alternative Compliance Certification: OFCCP understands that some contractors may take the position, based on advice of counsel, that their compensation self-evaluation is subject to certain protections from disclosure, such as the attorney client privilege or attorney work product doctrine, and that these protections would be waived if the contractor disclosed the self-evaluation. OFCCP does not take any position as to the applicability of such protections in the context of a compensation self-evaluation. However, to avoid protracted legal disputes over the applicability of such protections, OFCCP will permit the contractor to certify its compliance with 41 CFR 60–2.17(b)(3) in lieu of producing the methodology or results of its compensation self-evaluation analyses to OFCCP during a compliance review. The certification must be in writing, signed by a duly authorized officer of the contractor under penalty of perjury, and the certification must state that the contractor has performed a compensation self-evaluation with respect to the affirmative action program or workplace at issue, at the direction of counsel, and that counsel has advised the contractor that the compensation self-evaluation analyses and results are subject to the attorney-client privilege and/or the attorney work product doctrine. Because in such an instance OFCCP cannot evaluate the contractor's compliance with the general standards outlined in Section I of this Notice, a contractor that opts for this compliance certification alternative will not be entitled to the coordination outlined in Section IIB of this Directive. That is, contractors that opt for this alternative compliance certification do not receive the benefit of OFCCP coordination of agency compliance monitoring activities. Thus, for contractors that elect only to certify compliance with Section 60–2.17(b)(3), OFCCP will evaluate their compensation practices without regard to the analysis or results of their compensation self-evaluation systems.

Signed at Washington, DC this 10th day of November, 2004.

Victoria A. Lipnic,

Assistant Secretary for the Employment Standards Administration.

Charles E. James, Sr.,

Deputy Assistant Secretary for Federal Contract Compliance.

[FR Doc. 04–25402 Filed 11–15–04; 8:45 am]

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Federal Register

Tuesday,
November 16, 2004

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Second-in-Command Pilot Type Rating; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2004–19630; Notice No. 04–14]

RIN 2120–AI38

Second-in-Command Pilot Type Rating

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to establish a second-in-command (SIC) pilot type rating for those persons who complete the required SIC training. The purpose of this proposal is to conform the FAA pilot type rating requirements to the International Civil Aviation Organization (ICAO) pilot type rating standards and alleviate the difference that the FAA currently has on file with ICAO. The intended effect of this proposal is to allow U.S. flight crews to continue to operate in international airspace without the threat of being grounded for not holding the appropriate pilot type rating.

DATES: Send your comments to reach us by December 16, 2004.

ADDRESSES: You may send comments identified by Docket Number FAA–2004—using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3844.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

All comments received will be filed in the docket. The FAA will develop a report that summarizes each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard that identifies the docket number. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of these rulemaking documents using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the GPO's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140/html.*

You can get a printed copy by sending a request to: Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591; or by telephoning 202/267–9680. Please identify the docket number of this rulemaking in your request.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Civil Aviation (61 Stat. 1180), which was signed at Chicago, Illinois, on December 7, 1944, is an international treaty about aviation that establishes certain principles and arrangements to ensure that international civil aviation develops in a safe and orderly manner and operates soundly and economically. The Member States that have signed the Convention, including the United States, agree to keep their regulations governing civil aviation, to the greatest possible extent, consistent with those established under the Convention (article 12). Concerning pilots and flight crew members, the signatory Member States agree to recognize as valid certificates of competency and licenses issued by other signatories if the requirements for the certificates or licenses are equal to or above the minimum standards established under the Convention (article 33). If a signatory Member State finds it impracticable to comply with an international standard or bring its regulations into full accord with an international standard, or adopts regulations differing from an international standard, it must notify ICAO of the difference (article 38).

Currently, the United States has a difference filed with ICAO concerning our SIC qualification requirements vs. ICAO's type ratings standards for the SIC pilot flight crewmember position (See ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A). During recent meetings between FAA and ICAO officials, the FAA has explained that our SIC qualifications (14 CFR 61.55) require initial and annual recurrent knowledge and flight training for pilots who serve in the SIC pilot crewmember position, whereas the ICAO type rating standard does not. Although ICAO officials understand our difference, they stated that the § 61.55 SIC pilot familiarization training requirements do not conform to ICAO pilot type ratings standards for the SIC pilot flight crewmember position because the SIC pilot does not actually receive a pilot type rating under the existing § 61.55 provisions. As a result, foreign civil aviation authorities have put the FAA and U.S. flight crews on

notice that they intend to enforce the ICAO type rating standards for SIC pilot crewmembers when U.S. flight crews operate in European airspace and in some Caribbean countries

Discussion of NPRM

The FAA is proposing to revise 14 CFR § 61.5(b)(5) by adding a new subparagraph (iv) that provides for the SIC type rating. The FAA is proposing to revise 14 CFR § 61.55 by adding new paragraphs (a)(3) and (d) that would provide for the issuance of an aircraft type rating for SIC privileges when a person completes the SIC pilot familiarization training set forth in paragraph (b) of 14 CFR § 61.55. This NPRM proposes to conform our 14 CFR § 61.55 SIC qualification requirements with the ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A type rating standards and would eliminate our difference on file with ICAO. By issuing an aircraft type rating for SIC privileges only, the FAA would conform its pilot type rating requirements to the ICAO type rating standards and allow U.S. flight crews to operate internationally unimpeded.

However, the FAA wants it understood that as long as the person operates within the airspace of the United States (as defined in 14 CFR 91.1), a person needn't hold this proposed SIC pilot type rating. Only when a person operates in international airspace or the airspace of a foreign country where compliance with the pilot type rating standards of ICAO (*i.e.*, ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A) or a foreign civil aviation authority's rule is it mandatory that U.S. pilot flightcrews hold the appropriate pilot type rating. As long as a person operates within the airspace of the United States (as defined in 14 CFR 91.1), that person only needs to comply the SIC qualifications and training of 14 CFR 61.55.

In addition, the FAA is proposing to revise 14 CFR 61.55 by adding new paragraph (e). This proposal would provide for the issuance of a pilot type rating for SIC privileges when a person satisfactorily completes an approved second-in-command training program under parts 121, 125, or 135 in an aircraft that is certificated for operations with a minimum crew of at least two pilots and the aircraft's type certificate requires a pilot type rating. The FAA believes that the pilot community and aircraft operators will support this NPRM because it would impose only minor additional costs on some pilots and operators.

The FAA intends to issue the SIC pilot type rating according to the following process:

1. The SIC applicant must receive the familiarization training of § 61.55(b) from a qualified pilot in command [*See* § 61.31(a)] or an authorized flight instructor who holds the aircraft type rating on his/her pilot certificate [*See* § 61.31(a) and § 61.195(b)]. The ground training of § 61.55(b)(1) may be given by an authorized advanced ground instructor [*See* § 61.215(b)], authorized flight instructor, or qualified pilot in command.

2. The person who provides the SIC familiarization training must sign the applicant's logbook or training record to verify that the training was given. The verification of the training must be in accordance with § 61.51(h)(2), and be documented in the SIC applicant's logbook or training record with the kind of ground and flight training and amount of training given [*See* § 61.51(h)(2)]. The person who provided the training must sign the SIC applicant's logbook/training record after completion of each lesson.

3. The SIC applicant must complete and sign an Airman Certificate and/or Rating Application, FAA Form 8710–1, and submit the application to an FAA Flight Standards District Office or to an Examiner. The Examiner must have the authority to conduct practical tests for pilot certification.

4. The person(s) who provides the ground and flight familiarization training to the SIC applicant must sign the area of the FAA Form 8710–1 identified as the ''Instructor's Recommendation.'' This signoff is required in this area of the form even if a pilot in command who does not hold a flight instructor certificate provided the training.

5. The SIC applicant must appear in person at an FAA Flight Standards District Office or to an Examiner with his/her logbook/training records and a completed and signed FAA Form 8710–1.

6. The FAA Flight Standards District Office or Examiner reviews the SIC applicant's logbook/training record to ensure completion of the required training and endorsements. The Aviation Safety Inspector, Aviation Safety Technician, or Examiner would review the applicant's logbook/training record and inform the applicant that the SIC Privileges Only limitation may only be removed if that applicant completes the appropriate type rating practical test for pilot-in-command qualification. There is no practical test required for the issuance of the SIC Privileges Only type rating.

7. The FAA Flight Standards District Office or Examiner completes the application and issues the applicant a temporary pilot certificate for a SIC type rating with the appropriate aircraft type rating with the limitation ''SIC Privileges Only.'' For example, an applicant who accomplishes the § 61.55(b) SIC familiarization training in a Cessna 500 would receive a temporary pilot certificate that reads as follows:

Commercial Pilot Certificate, Airplane Single Engine Land, Airplane Multiengine Land, Instrument Airplane, CE500 SIC Privileges Only.

8. The FAA Flight Standards District Office forwards the application and newly issued temporary pilot certificate to the FAA Airman Certification Branch, AFS–760. If the application is made through an Examiner, the Examiner forwards the application and newly issued temporary pilot certificate to the Examiner's jurisdictional FAA Flight Standards District Office who sends the application and file to the FAA Airman Certification Branch, AFS–760.

9. The FAA Airman Certification Branch processes the SIC applicant's application and temporary pilot certificate and issues the applicant a permanent pilot certificate.

In addition, a person who satisfactorily completes an approved second-in-command training program under parts 121, 125, or 135 in an aircraft that is certificated for operations with a minimum crew of at least two pilots and the aircraft's type certificate requires a pilot type rating is entitled to receive that aircraft type rating for second-in-command privileges. The procedure for issuing a SIC type rating would be as follows:

1. The SIC applicant must complete an approved second-in-command training program under parts 121, 125, or 135 in an aircraft that is certificated for operations with a minimum crew of at least two pilots and the aircraft's type certificate requires a pilot type rating.

2. The person who provides the SIC training must sign the applicant's logbook or training record to verify the training was given. The verification of the training must be in accordance with § 61.51(h)(2), and be documented in the SIC applicant's logbook or training record with the kind of ground and flight training and amount of training given [*See* § 61.51(h)(2)]. The person who provided the training must sign the SIC applicant's logbook/training record after completion of each lesson.

3. The SIC applicant must complete and sign an Airman Certificate and/or Rating Application, FAA Form 8710–1, and submit the application to an FAA Flight Standards District Office or to an

Examiner. The Examiner must have authority to conduct practical tests for pilot certification. A part 121 or part 135 Check Airman cannot review and approve the application unless that person also has examiner authority to conduct practical tests for pilot certification and holds an FAA Letter of Authority.

4. The person(s) who provided the ground and flight training to the SIC applicant must sign the area of the FAA Form 8710–1 identified as the ''Instructor's Recommendation.'' This signoff is required in this area of FAA Form 8710–1 even if a pilot in command who does not hold a flight instructor certificate provided the training.

5. The SIC applicant must appear in person at an FAA Flight Standards District Office or to an Examiner with his/her logbook/training records and a completed and signed FAA Form 8710–1.

6. The FAA Flight Standards District Office or Examiner reviews the SIC applicant's logbook and/or training record for ensuring completion of the required training and endorsements. An Aviation Safety Inspector, Aviation Safety Technician, or Examiner reviews the applicant's logbook/training record and informs the applicant that the SIC Privileges Only limitation may only be removed if that applicant completes the appropriate type rating practical test for pilot-in-command qualification. There is no practical test required for the issuance of the SIC Privileges Only type rating.

7. The FAA Flight Standards District Office completes the application and issues the applicant a temporary pilot certificate for an SIC type rating with the appropriate aircraft type rating with the limitation ''SIC Privileges Only.'' For example, an applicant who accomplishes SIC training in a Boeing 737 would receive a temporary pilot certificate that reads as follows:

Commercial Pilot Certificate, Airplane Single Engine Land, Airplane Multiengine Land, Instrument Airplane, B–737 SIC Privileges Only.

8. The FAA Flight Standards District Office forwards the application and newly issued temporary pilot certificate to the FAA Airman Certification Branch, AFS–760. If the application is made through an Examiner, the Examiner forwards the application and newly issued temporary pilot certificate to the Examiner's jurisdictional FAA Flight Standards District Office who sends the application and file to the FAA Airman Certification Branch, AFS–760.

9. The FAA Airman Certification Branch processes the SIC applicant's application and temporary pilot certificate and issues the applicant a permanent pilot certificate.

The FAA anticipates that many pilots have already completed their SIC training, whether it was § 61.55(b) SIC familiarization training or an approved SIC training program under parts 121, 125, or 135, and would be making application for an SIC pilot type rating based on past completion of SIC pilot training or a part 125 proficiency check. The procedures for making application for an SIC pilot type rating would basically be the same as previously stated in this document. The only difference would be that applicants who have completed their SIC training prior to the FAA issuing its final rule for SIC pilot type ratings would be required to show compliance with either the initial or recurrent SIC training within the preceding 12 calendar months prior to the month of application for an SIC pilot type rating. The following examples illustrate how the rule would apply to pilots who have already completed their SIC training:

Example No. 1: The date is January 30, 2005, and the final rule for issuing SIC pilot type ratings is now in effect. An airman completed initial § 61.55(b) SIC pilot familiarization training in a Cessna 500 on August 6, 1998. The airman last completed recurrent § 61.55(b) SIC pilot familiarization training in a Cessna 500 on August 6, 2000. This airman could not apply for a SIC pilot type rating for the CE500 until completing recurrent SIC familiarization training within the 12 calendar months before the month of application.

Example No. 2: The date is January 30, 2005, and the final rule for issuing SIC pilot type ratings is now in effect. An airman completed initial part 121 SIC pilot training in a Boeing 737 on August 6, 1998. The airman has completed recurrent part 121 SIC pilot training in a Boeing 737 every 12 calendar months, including on August 13, 2004. This airman could apply for a SIC pilot type rating for the B737 because the recurrent training was completed within the 12 calendar months before January 2005.

Example No. 3: The date is January 5, 2005, and the final rule for issuing SIC pilot type ratings is now in effect. An airman completed a part 125 SIC proficiency check in a Gulfstream IV on August 6, 1990. The airman next shows completion of a part 125 SIC proficiency check in a Gulfstream IV on January 23, 2004. This airman could apply for an SIC pilot type rating for the Gulfstream IV because part 125 SIC proficiency check was completed within the 12 calendar months before January 2005.

Example No. 4: The date is January 5, 2005, and the final rule for issuing SIC pilot type ratings is now in effect. An airman completed initial § 61.55(b) SIC familiarization in a Lear 60 on August 6, 1990. The airman next shows completion of § 61.55(b) SIC familiarization training in a Lear 60 on January 23, 2004. This airman could apply for an SIC pilot type rating for the Lear 60 because the recurrent SIC familiarization training was completed within the 12 calendar months before January 2005.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. This proposal contains the following additional information collection requirement for pilots who apply for an SIC pilot type rating. As previously stated in this document, the primary purpose for this additional information collection requirement is to allow U.S. flight crews to continue to operate in international airspace without the threat of being grounded for not holding the appropriate pilot type rating.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Second-in-Command Pilot Type Rating.

Summary: This proposal would establish an application process using the existing Airman Certificate and/or Rating Application, FAA Form 8710–1, for pilots who apply for an SIC pilot type rating for the reasons previously stated. This proposal would generate a need for the FAA's Civil Aviation Registry and Flight Standards District Offices to support the processing of the FAA Form 8710–1 application and issuing the SIC pilot type rating.

Respondents: The likely respondents to this proposal are the pilots who will be required to complete and submit the FAA Form 8710–1 application when applying for an SIC pilot type rating. However, as it was previously stated in this document, the FAA wants it understood that as long as the person operates within the airspace of the United States (as defined in 14 CFR 91.1), a person won't be required to hold this proposed SIC pilot type rating. Only when a person operates in international airspace or the airspace of a foreign country where compliance with the pilot type rating standards of ICAO (*i.e.,* ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A) or a foreign civil aviation authority's rule is it mandatory that U.S. pilot flightcrews hold the appropriate pilot type rating. As long as a person operates within the airspace of the United States (as defined in 14 CFR 91.1), that person only needs to comply

the SIC qualifications and training of 14 CFR 61.55.

Frequency: Each pilot who needs to obtain the SIC pilot type rating will do so only once.

Annual Burden Estimate: The FAA has no estimate of the annual recordkeeping and reporting burden.

The FAA is requesting information from the public on the following questions:

How many pilots will apply for an SIC pilot type rating on an annual basis?

What are the annual burden hours to the public?

What are the annual costs to pilot who will be applying for an SIC pilot type rating?

What will be the total impact of this proposal?

According to the regulations implementing the Paperwork Reduction Act of 1995, [5 CFR 1320.8(b)(2)(vi)], an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (OMB). If approved by OMB, the information collection requirement contained in this NPRM will be incorporated into the current approval of the Airman Certificate and/or Rating Application, FAA Form 8710–1. The approved OMB control number for the Airman Certificate and/or Rating Application, FAA Form 8710–1, is 2120–0021.

Economic Assessment, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

For proposals with an expected minimal cost impact, a formal assessment of costs and benefits is not required. The Department of Transportation Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement is included in the NPRM stating that the FAA has determined that the expected outcome will have a minimal impact with positive net benefits.

The FAA's assessment of this NPRM indicates that its economic impact will be minimal because it does not propose to significantly change the SIC qualification requirements. The purpose of this NPRM is to conform FAA pilot type rating rules with our international obligations to ICAO, so as to remove an outstanding difference between our 14 CFR 61.55 SIC qualification requirements with the ICAO Annex 1, paragraphs 2.1.3.2 abd 2.1.4.1.A type rating standards.

Accordingly, the FAA has determined that there may be minor costs to those pilots who will need the SIC pilot type rating for international flight operations. These costs could include the time required to complete the FAA Form 8710–1 and the time and expense of traveling to an examiner or FAA Flight Standards District Office to file the application. The FAA has determined there may be some benefits to U.S. operators and pilots when conducting flight operations in foreign airspace where a foreign country's civilian aviation authority may enforce ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A type rating standards. The FAA has thus determined that this NPRM would have minimal impact with positive net benefits. We specifically request comments from the public on this issue.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This NPRM imposes minor costs on individuals by requiring U.S. pilots who fly overseas to obtain the SIC pilot type rating. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from the public regarding this determination.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it would reduce trade barriers by narrowing the difference between the U.S. and ICAO regulations. The FAA has determined there may be some benefits to U.S. operators and pilots when conducting flight operations in foreign airspace where a foreign country's civilian aviation authority may enforce ICAO Annex 1, paragraphs 2.1.3.2 and 2.1.4.1.A type rating standards.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal

agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This NPRM does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, ''Federalism,'' dated August 4, 1999 (64 FR 43255). We have determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 307(k) and involves no extraordinary circumstances. This NPRM proposes to allow for the issuance of pilot type ratings to SIC pilot crewmembers in order to conform the FAA pilot type rating requirements to the ICAO pilot type ratings standards.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 61

Aircraft, Airmen, Aviation safety, and Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter H of Title 14 Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Amend § 61.5 by adding new paragraph (b)(5)(iv) to read as follows:

§ 61.5 Certificates and ratings issued under this part.

* * * * *

(b) * * *

(5) * * *

(iv) Second-in-command type rating for aircraft that is certificated for operations with a minimum crew of at least two pilots.

* * * * *

3. Amend § 61.55 by revising the introductory language of paragraph (a), revising paragraph (a)(2), adding new paragraph (a)(3); redesignating existing paragraphs (d) through (h) as paragraphs (f) through (j) and adding new paragraphs (d) and (e) to read as follows:

§ 61.55 Second-in-command qualifications.

(a) Except as provided in paragraph (e) of this section, no person may serve as a second-in-command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second-in-command unless that person holds:

(1) * * *

(2) An instrument rating that applies to the aircraft being flown if the flight is under IFR; and

(3) An aircraft type rating for aircraft that is certificated for operations with a minimum crew of at least two pilots.

* * * * *

(d) If a person complies with the second-in-command familiarization training requirements in paragraph (b) of this section in an aircraft that is certificated for operations with a minimum crew of at least two pilots and the aircraft's type certificate requires a pilot type rating, then that person is entitled to receive that aircraft type rating for second-in-command privileges.

(e) A person who has satisfactorily completed an approved second-in-command training program under 14 CFR parts 121, 125, or 135 in an aircraft that is certificated for operations with a minimum crew of at least two pilots and the aircraft's type certificate requires a pilot type rating, then that person is entitled to receive that aircraft type rating for second-in-command privileges.

* * * * *

Issued in Washington, DC, on November 9, 2004.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 04–25415 Filed 11–15–04; 8:45 am]

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CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 16, 2004

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Air quality implementation plans; approval and promulgation; various States:

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TREASURY DEPARTMENT

Internal Revenue Service

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Salary reduction agreement; definifition and payments; published 11-16-04

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Onions grown in—

Idaho and Oregon; import regulations; comments due by 11-22-04; published 9-22-04 [FR 04-21238]

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Federal Crop Insurance Corporation

Crop insurance regulations:

Nursery crop insurance provisions; comments due by 11-22-04; published 10-8-04 [FR 04-22740]

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Antidumping and countervailing duties:

Certification of factual information during proceedings; comments due by 11-22-04; published 9-22-04 [FR 04-21209]

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Fishery conservation and management:

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 11-22-04; published 11-5-04 [FR 04-24760]

West Coast salmon; comments due by 11-26-04; published 11-10-04 [FR 04-25112]

COMMODITY FUTURES TRADING COMMISSION

Review of National Futures Association decisions; comments due by 11-24-04; published 10-25-04 [FR 04-23828]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

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Grants:

Credit Enhancement for Charter School Facilities Program; comments due by 11-22-04; published 10-22-04 [FR 04-23746]

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Commercial and industrial equipment; energy efficiency program:

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Commercial air conditioners and heat pumps; comments due by 11-22-04; published 10-21-04 [FR 04-17731]

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Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Pulp and paper industry; comments due by 11-23-04; published 11-2-04 [FR 04-24409]

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West Virginia; comments due by 11-26-04; published 10-27-04 [FR 04-23945]

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 11-26-04; published 10-27-04 [FR 04-23948]

Pennsylvania; comments due by 11-26-04; published 10-27-04 [FR 04-23940]

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Correction; comments due by 11-23-04; published 9-24-04 [FR 04-21206]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4381/P.L. 108–392

To designate the facility of the United States Postal Service located at 2811 Springdale Avenue in Springdale, Arkansas, as the "Harvey and Bernice Jones Post Office Building". (Oct. 30, 2004; 118 Stat. 2245)

H.R. 4471/P.L. 108–393

Homeownership Opportunities for Native Americans Act of 2004 (Oct. 30, 2004; 118 Stat. 2246)

H.R. 4481/P.L. 108–394

Wilson's Creek National Battlefield Boundary Adjustment Act of 2004 (Oct. 30, 2004; 118 Stat. 2247)

H.R. 4556/P.L. 108–395

To designate the facility of the United States Postal Service located at 1115 South Clinton Avenue in Dunn, North Carolina, as the "General William Carey Lee Post Office Building". (Oct. 30, 2004; 118 Stat. 2249)

H.R. 4579/P.L. 108–396

Truman Farm Home Expansion Act (Oct. 30, 2004; 118 Stat. 2250)

H.R. 4618/P.L. 108–397

To designate the facility of the United States Postal Service located at 10 West Prospect Street in Nanuet, New York,

as the ''Anthony I. Lombardi Memorial Post Office Building''. (Oct. 30, 2004; 118 Stat. 2251)

H.R. 4632/P.L. 108–398

To designate the facility of the United States Postal Service located at 19504 Linden Boulevard in St. Albans, New York, as the ''Archie Spigner Post Office Building''. (Oct. 30, 2004; 118 Stat. 2252)

H.R. 4731/P.L. 108–399

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program. (Oct. 30, 2004; 118 Stat. 2253)

H.R. 4827/P.L. 108–400

To amend the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000 to rename the Colorado Canyons National Conservation Area as the McInnis Canyons National Conservation Area. (Oct. 30, 2004; 118 Stat. 2254)

H.R. 4917/P.L. 108–401

Federal Regulatory Improvement Act of 2004 (Oct. 30, 2004; 118 Stat. 2255)

H.R. 5027/P.L. 108–402

To designate the facility of the United States Postal Service located at 411 Midway Avenue in Mascotte, Florida, as the ''Specialist Eric Ramirez Post Office''. (Oct. 30, 2004; 118 Stat. 2257)

H.R. 5039/P.L. 108–403

To designate the facility of the United States Postal Service located at United States Route 1 in Ridgeway, North Carolina, as the ''Eva Holtzman Post Office''. (Oct. 30, 2004; 118 Stat. 2258)

H.R. 5051/P.L. 108–404

To designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the ''Leonard C. Burch Post Office Building''. (Oct. 30, 2004; 118 Stat. 2259)

H.R. 5107/P.L. 108–405

Justice for All Act of 2004 (Oct. 30, 2004; 118 Stat. 2260)

H.R. 5131/P.L. 108–406

Special Olympics Sport and Empowerment Act of 2004 (Oct. 30, 2004; 118 Stat. 2294)

H.R. 5133/P.L. 108–407

To designate the facility of the United States Postal Service located at 11110 Sunset Hills Road in Reston, Virginia, as the ''Martha Pennino Post Office Building''. (Oct. 30, 2004; 118 Stat. 2297)

H.R. 5147/P.L. 108–408

To designate the facility of the United States Postal Service located at 23055 Sherman Way in West Hills, California, as the ''Evan Asa Ashcraft Post Office Building''. (Oct. 30, 2004; 118 Stat. 2298)

H.R. 5186/P.L. 108–409

Taxpayer-Teacher Protection Act of 2004 (Oct. 30, 2004; 118 Stat. 2299)

H.R. 5294/P.L. 108–410

John F. Kennedy Center Reauthorization Act of 2004 (Oct. 30, 2004; 118 Stat. 2303)

S. 129/P.L. 108–411

Federal Workforce Flexibility Act of 2004 (Oct. 30, 2004; 118 Stat. 2305)

S. 144/P.L. 108–412

To require the Secretary of Agriculture to establish a program to provide assistance to eligible weed management entities to control or eradicate noxious weeds on public and private land. (Oct. 30, 2004; 118 Stat. 2320)

S. 643/P.L. 108–413

Hibben Center Act (Oct. 30, 2004; 118 Stat. 2325)

S. 1194/P.L. 108–414

Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (Oct. 30, 2004; 118 Stat. 2327)

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